

June 30, 2023

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Submitted via email to: bor-sha-ao-lsari@usbr.gov

Re: Middle Rio Grande Lower San Acacia Reach Improvements Project Environmental Impact Statement Scoping Comments

To the Project Manager:

WildEarth Guardians submits these scoping comments to be considered as part of the Bureau of Reclamation’s Middle Rio Grande Lower San Acacia Reach Improvements Project Environmental Impact Statement process.

I. INTERESTS OF THE COMMENTING ORGANIZATION

WildEarth Guardians (“Guardians”) is a 501(c)(3) non-profit organization, working to protect and restore the wildlife, wild places, wild rivers, and health of the American West. Guardians has more than 183,000 members and supporters across the United States and the world. For more than two decades, Guardians has worked to safeguard clean water and flows in western rivers and to restore the health of riparian ecosystems throughout the West. Headquartered in Santa Fe, New Mexico, Guardians has been working for many years on conservation issues in the Rio Grande Valley in central New Mexico, particularly the region from Cochiti Dam to Elephant Butte Reservoir (“Middle Rio Grande”). Guardians has played an active role in engaging with federal agencies on conservation issues in the Middle Rio Grande and here continues its advocacy for the health of the Rio Grande by participating in the Bureau of Reclamation’s Lower San Acacia Reach Improvements Project (“LSARI”) Environmental Impact Statement (“EIS”) scoping process.

II. NEPA BACKGROUND

In enacting the National Environmental Policy Act (“NEPA”), Congress recognized the “profound impact of man’s activity” on the natural environment and declared it a national policy “to create and maintain conditions under which man and nature can exist in productive harmony.”¹ “NEPA promotes its sweeping commitment to ‘prevent or eliminate damage to the environment and biosphere’ by focusing Government and public attention on the environmental effects of proposed agency action.”² Accordingly, the two fundamental goals of the statute are to promote “informed agency decisionmaking and public access to information.”³ NEPA accomplishes these goals by requiring federal agencies to analyze the environmental impacts of

¹ 42 U.S.C. § 4331(a)

² *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989) (quoting 42 U.S.C. § 4321).

³ *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 707 (10th Cir. 2009).

their proposed actions, and to disclose this information to the public.⁴ “By focusing both agency and public attention on the environmental effects of proposed actions, NEPA facilitates informed decisionmaking by agencies.”⁵ NEPA imposes “action-forcing procedures...requir[ing] that agencies take a hard look at environmental consequences.”⁶ Agencies are required to prepare a detailed statement assessing the “adverse environmental impacts” of a proposed action, and evaluating all reasonable alternatives to the proposed action that would avoid or lessen these impacts.⁷ Agencies must also analyze the indirect effects and cumulative impacts of a project.⁸ Courts hold that an agency must utilize “public comment and the best available scientific information” in taking a “hard look” at the environmental consequences of an agency action.⁹ To meet the “hard look” requirement, an agency must make a “reasoned evaluation of the available information” and employ a method that is not arbitrary or capricious. *Id.* Accordingly, “vague and conclusory statements, without any supporting data, do not constitute a ‘hard look’ at the environmental consequences of the action as required by NEPA.”¹⁰ These procedures ensure that agencies will not underestimate or overlook significant environmental impacts before moving forward with a proposed agency action.¹¹

III. PROJECT OVERVIEW AND BACKGROUND

Over the last century, federal and local entities in the Middle Rio Grande (“MRG”) have been constraining the path of the river with jetty jacks and levees and capturing its dynamic flows by building dams and diversions. The Rio Grande, which once freely roamed across and inundated its floodplain, has lost its ability to support and rejuvenate diverse ecosystems in its path and along its banks. These changes have resulted in significant habitat loss and precipitous population declines of native species, resulting in the listing of the Rio Grande silvery minnow, the Southwestern willow-flycatcher, and the yellow-billed cuckoo under the Endangered Species Act (“ESA”).

The *Final Biological and Conference Opinion for Bureau of Reclamation, Bureau of Indian Affairs, and Non-Federal Water Management and Maintenance Activities on the Middle Rio Grande, New Mexico* (“2016 BiOp”) was issued in December 2016 in response to the Bureau of Reclamation’s (“Reclamation”) request for reinitiation of section 7 consultation under the ESA, which requires that federal agencies must consult with the U.S. Fish and Wildlife Service (“FWS”) when any project or action they authorize, fund, or carry out may affect a listed species or its designated critical habitat.¹² One of the primary conservation measures of the 2016 BiOp is “implementation of large-scale river restoration within the lower reaches of the MRG to improve the hydrology and geomorphology, create additional spawning and rearing habitat, and improve

⁴ 42 U.S.C. § 4332(C).

⁵ *Richardson*, 565 F.3d at 703.

⁶ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

⁷ 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1502.13, 1502.14.

⁸ *WildEarth Guardians v. U.S. Fish & Wildlife Serv.*, 784 F.3d 677, 690 (10th Cir. 2015).

⁹ *Biodiversity Cons. Alliance v. Jiron*, 762 F.3d 1036, 1086 (10th Cir. 2014) (internal citation omitted).

¹⁰ *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 973 (9th Cir. 2006).

¹¹ *Robertson*, 490 U.S. at 349.

¹² See <https://www.fws.gov/service/esa-section-7-consultation>

silvery minnow survival by providing wetted river in silvery minnow habitat that has previously dried”.¹³ In 2018, Reclamation released a Draft Lower Reach Plan that included various planned river maintenance and habitat restoration projects that would improve habitat and enhance flows in the Lower Reaches (Isleta and San Acacia reaches, from Isleta Pueblo southern boundary to the headwaters of Elephant Butte Reservoir) to comply with the 2016 BiOp.¹⁴

Reclamation’s latest proposed plan, the Middle Rio Grande Lower San Acacia Reach Improvements Project (“LSARI”), builds upon the 2016 BiOp and Lower Reach Plan as a “large scale restoration project”.¹⁵ At this early stage in the process, Guardians offers its cautious support for Reclamation’s proposal to realign the Rio Grande in the Lower San Acacia Reach as a nature-based solution that will help reconnect the river to its floodplain and increase the length of wetted river, both of which are important habitat components needed to improve crashing population levels of silvery minnow. If implemented in an environmentally-conscious manner, Guardians believes that the LSARI project could provide critical habitat restoration benefits in this critical reach of the Middle Rio Grande, in keeping with the 2016 BiOp and the Lower Reach Plan.

The no-jeopardy determination in the 2016 BiOp relied on the FWS’s determination that implementing the Lower Reach Plan will “increase silvery minnow spawning, survival, and distribution” as well as “improve the [Primary Constituent Elements] of silvery minnow critical habitat”.¹⁶ The 2016 BiOp similarly relies on projected improvements of “[Primary Constituent Elements] of flycatcher designated critical habitat” and “cuckoo proposed critical habitat” as a result of the implementation of the Lower Reach Plan.¹⁷ Following these conclusions, the Lower Reach Plan is a key conservation measure central to the FWS’s no-jeopardy determination in the 2016 BiOp.¹⁸ Therefore, it is essential that the LSARI project moves forward in a way that delivers the habitat restoration benefits for silvery minnows, flycatchers, and cuckoos that FWS anticipated the Lower Reach Plan would deliver.

IV. PURPOSE AND NEED

In adopting the Endangered Species Act, Congress intended that the protection of endangered species be “afforded the highest of priorities.”¹⁹ As such, it is important that Reclamation make clear that the primary purpose and need of the LSARI project is to comply with the 2016 BiOp by delivering large-scale habitat restoration for threatened and endangered species through the San Acacia Reach.

¹³ U.S. Fish and Wildlife Service. 2016. *Final Biological and Conference Opinion for Bureau of Reclamation, Bureau of Indian Affairs, and Non-Federal Water Management and Maintenance Activities on the Middle Rio Grande, New Mexico* [hereinafter 2016 BiOp], at 76.

¹⁴ Bureau of Reclamation. 2018. *Draft Lower Reach Plan* [hereinafter 2018 Draft Lower Reach Plan]. Middle Rio Grande Project, Albuquerque Area Office, Upper Colorado Region.

¹⁵ 2016 BiOp, at 85.

¹⁶ 2016 BiOp, at 102.

¹⁷ 2016 BiOp, at 104-105.

¹⁸ 2016 BiOp, at 102-105.

¹⁹ *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978).

Currently, the purpose of the LSARI project is listed in three parts: (1) “improve water delivery to Elephant Butte Reservoir,” (2) “maintain and enhance ecosystem health (i.e., protecting and promoting recovery of endangered species, minimizing river drying, and increasing available habitat),” and (3) “increasing the benefit of system maintenance actions by working with the geomorphic trends of the river.”²⁰ We are concerned that as the purpose is currently written, it is unclear if water delivery is the primary purpose of the project and the maintenance and enhancement of ecosystem health is a secondary benefit of the realignment. Improved water delivery to Elephant Butte Reservoir may be an appropriate secondary consideration of the proposed river realignment, but it should not outweigh the primary purpose of habitat restoration and the protection and recovery of endangered species.

Reclamation should consider the objectives of the 2018 Draft Lower Reach Plan as an example of an appropriate purpose and need statement that takes into account the fundamental importance of protecting and recovering endangered species: “(1) improve silvery minnow, flycatcher, and cuckoo habitat, (2) significantly increase available overbanking habitat at lower spring flows, and (3) increase the amount of perennially wetted habitat.”²¹ These goals clearly come from compliance with the 2016 BiOp and state definitively that improving the status of listed species and their habitat is the topmost priority. Reclamation should revise the purpose and need of the river realignment project to reflect this same prioritization of habitat restoration and endangered species recovery.

V. ALTERNATIVES

i.) Preliminary Alternative B – Single-Channel System downstream of Bosque del Apache National Wildlife Refuge

Of the preliminary alternatives proposed by Reclamation, we find that Preliminary Alternative B would do the best job of enhancing silvery minnow, flycatcher, and cuckoo habitat while improving water delivery to Elephant Butte Reservoir. While the details of Alternative B will need to be further developed as the EIS process moves forward, Guardians offers its initial support for this alternative, but notes the following uncertainties that require further clarification.

One of the potential features listed under Preliminary Alternative B is “a channel conveying inflow from Elmendorf Drain above RM 69”.²² Guardians expects that the environmental benefits of this alternative will be heightened by reconnecting the Elmendorf Drain to the main river channel to increase wetted habitat and water conveyance, and specifically requests that Reclamation assess this potential feature as part of Preliminary Alternative B.

Guardians also requests clarification regarding the statement under Preliminary Alternative B that a “single channel is defined as merging the LFCC with the active river channel.”²³ This description lacks clarity regarding what will be done with the LFCC. The only mention of the existing LFCC is found in the given map for Preliminary Alternative B, which states, “The

²⁰ See <https://www.virtualpublicmeeting.com/mrg-lsari-eis-project-overview>

²¹ *Draft Lower Reach Plan*, at 6.

²² See <https://www.virtualpublicmeeting.com/mrg-lsari-eis-preliminary-alternatives>

²³ *Id.*

existing LFCC will no longer be used.”²⁴ Reclamation should add to the description of the single channel alternative that the LFCC will be decommissioned to eliminate the negative environmental and hydrologic impacts of leaving the existing LFCC as a passive super-drain. If Preliminary Alternative B does not, in fact, contemplate LFCC decommissioning below Bosque del Apache National Wildlife, Guardians requests that Reclamation assess a separate alternative that specifically considers removal of the LFCC throughout the project area.

ii.) *Suggested Alternative – Single-Channel System through Bosque del Apache National Wildlife Refuge*

We would also like to submit an additional alternative for consideration that would include the same engineering projects as Preliminary Alternative B with the addition of decommissioning the LFCC through all or part of Bosque del Apache National Wildlife Refuge (“BDA”), upstream of the current project boundary. The stretch of the LFCC between Highway 380 and the southern end of Bosque del Apache experiences the most extreme seepage losses of the San Acacia reach and it is where the gradient between the Rio Grande and the LFCC is the steepest.²⁵ Given the significant seepage losses in this stretch, decommissioning the LFCC through as much of the BDA as feasible would amplify the benefits of the BDA Pilot and Full River Realignment Projects in increasing wetted habitat and water conveyance through the river channel.

Guardians recognizes that the LFCC currently provides an important water delivery function to BDA that would need to be replaced if the LFCC were decommissioned above any existing BDA water delivery locations. Accordingly, we request that Reclamation, in coordination with BDA staff, assess the feasibility of alternative water delivery to the Refuge as part of this alternative, including full deliveries to BDA through the existing “Hub” at the BDA north boundary and the existing Elmendorf Ditch. Alternatively, it is our understanding that water deliveries to the refuge would not be impacted if the LFCC were decommissioned through the southern/downstream half of the refuge, below the existing LFCC delivery points. Accordingly, at minimum, Reclamation should assess the feasibility and environmental impacts, including benefits, of decommissioning the LFCC below BDA’s existing water delivery locations.

iii.) *Preliminary Alternative C – Two-Channel System downstream of Bosque del Apache National Wildlife Refuge*

Guardians finds Preliminary Alternative C to be the least preferable of the preliminary action alternatives. Induced seepage due to existing LFCC infrastructure reduces river flows, aquatic habitat, and groundwater levels needed to support native riparian habitat for endangered species.²⁶ The negative impacts on river flows may be somewhat reduced from current levels by moving the LFCC further away from the river channel and reducing the hydraulic gradient. However, this alternative would continue LFCC operations for most of the San Acacia Reach, perpetuating the negative hydrologic impacts from this outdated infrastructure.

²⁴ See https://www.virtualpublicmeeting.com/s/MRG-LSARI-EIS_Prelim-Alt-B_508.pdf

²⁵ McLain, Katie. 2022. *Hydrological controls on flow conveyance losses on the Middle Rio Grande* (Master’s thesis). New Mexico Institute of Mining and Technology; Socorro, New Mexico, USA.

²⁶ 2016 BiOp, at 60.; *Id.* at 81 and 89.; Final Environmental Impact Statement, Upper Rio Grande Basin Water Operations Review (April 2007), at IV-23.

This alternative also includes building a new LFCC extension, requiring substantial investments that only mimic the negative effects of the already existing LFCC, which would be a poor use of resources meant to improve habitat for endangered species. Furthermore, maintaining the existing LFCC undermines the ability of the restored river channel to remain connected with groundwater flows, which is critical for sustaining wetted habitat, maintaining groundwater levels for native riparian habitat, and moving water efficiently to Elephant Butte Reservoir. Reclamation should not be considering substantial investments to relocate and extend the life of the outdated LFCC, but should be investing in new “green infrastructure” approaches to water management that have multiple benefits for ecosystem restoration and water deliveries.

VI. ANALYSIS OF IMPACTS

The potential impacts of the proposed river realignment project on ESA-listed species are of utmost importance. For silvery minnows, it is critical that Reclamation analyze how the LSARI project might affect aquatic habitat, wetted river miles, and spawning conditions. For yellow-billed cuckoos and Southwestern willow-flycatchers, Reclamation should analyze the project’s potential impacts on riparian habitat and overbank flooding areas.

Reclamation should conduct an assessment of the realignment project’s potential impacts on the surface water-groundwater connection, which is critical to understanding the hydraulic impacts, seepage from the river channel, and potential impacts on native riparian vegetation, which require shallow groundwater levels (< 3m) in order to thrive and successfully compete with invasive species such as tamarisk (*Tamarix* spp.).²⁷ It is our understanding that the New Mexico Interstate Stream Commission’s existing MIKE-SHE model may be helpful with this analysis and should be evaluated for its potential use to assess impacts to wetted river consistency and length, groundwater levels and riparian vegetation. Reclamation should work with partners to increase the parameters of the MIKE-SHE model and/or develop a new model if the existing MIKE-SHE model is insufficient for this assessment.

If Preliminary Alternative C continues to be considered, Reclamation must assess the cumulative impacts of the LSARI project and any proposals to alter the operations of the LFCC, such as the Middle Rio Grande Conservancy District’s (MRGCD’s) and the New Mexico Interstate Stream Commission’s (ISC’s) joint Study Proposal for Use of the Low Flow Conveyance Channel During the Monsoon Season for the Purpose of Increasing Seasonal Deliveries of Water to Elephant Butte Reservoir. If implemented, this proposal would divert monsoon flows from the Rio Grande to the LFCC, and Reclamation should evaluate how this action - or any similar proposals - would interact with the river realignment project and potential impacts on wetted habitat for silvery minnows, groundwater recharge, riparian vegetation, and other factors that may impact ESA-listed species and their critical habitat.

Guardians understands that the MRGCD/ISC proposal to divert monsoon flows out of the Rio Grande would likely undermine the benefits of Reclamation’s large-scale habitat restoration efforts through the LSARI project. We urge Reclamation to reject any proposals to restart

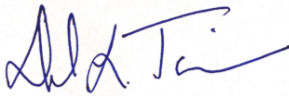
²⁷ 2016 BiOp, at 56.

diversions from the Rio Grande into the LFCC, and if Reclamation were to do so, there would be no need to consider the cumulative impacts of the two projects in this EIS.

VII. CONCLUSION

Guardians supports Reclamation's efforts to use nature-based methods to conduct large-scale habitat restoration in the Lower San Acacia Reach, reconnecting the river to its floodplain and groundwater table, increasing aquatic and riparian habitat, and improving the health of key species including Rio Grande silvery minnows, Southwestern willow-flycatchers, and yellow-billed cuckoos. The LSARI project will likely have secondary benefits of increasing water deliveries to Elephant Butte Reservoir, but improved water deliveries should not be the primary goal of the project. At this early stage in the process, Preliminary Alternative B seems like a viable and exciting path forward, but Reclamation should add our suggested alternative – "Single-Channel System through Bosque del Apache National Wildlife Refuge" – to the EIS for consideration. Guardians looks forward to engaging further with Reclamation as this process moves forward.

Sincerely,



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