LEGAL NOTICE, REQUEST FOR IMMEDIATE STOP-WORK, AND REQUEST FOR FEDERAL, STATE, AND LOCAL ENVIRONMENTAL REVIEW

Wildlife-Occupied Aquatic Drainage/Retention Area East of Sagebrush Church – Riverside Campus
6440 Coors Blvd NW, Albuquerque, New Mexico 87120
Observed Work: August 25–26, 2026

IMPORTANT LEGAL QUALIFICATION. This submission identifies documented facts, reported facts, and legal provisions requiring agency review. It does not represent that every cited statute has already been conclusively violated. Several provisions depend on facts not yet publicly established, including Clean Water Act jurisdiction, permit status, claimed maintenance exemptions, federal funding or authorization, species identification, and the destination of pumped water. Where those predicates are not yet established, this document requests an immediate determination before additional irreversible work occurs.

I. FACTUAL BASIS AND LOCATION

Photographic and video evidence supplied by local observers shows a water-filled drainage/retention feature directly east of Sagebrush Church – Riverside Campus, 6440 Coors Blvd NW, Albuquerque, New Mexico 87120.

Images from August 25–26, 2026 show standing water, aquatic vegetation, accumulated floating garbage, heavy equipment, and substantial soil/fill being placed at or into the aquatic area.

Video evidence reportedly documents a live beaver actively occupying the waterway. Local observers also report turtles, frogs, birds, fish and other aquatic wildlife. The presence, number, species, and legal status of each animal should be independently verified by qualified wildlife personnel.

Local reports identify the feature with the La Orilla/Piedras Marcadas drainage system. Because the precise facility name, ownership, drainage path and receiving water have not yet been independently established, the responsible agencies should identify those facts in writing.

Reports further state that water was pumped or drained and that filling was undertaken in response to complaints concerning trash and mosquitoes. The destination of the pumped water, the authority for the filling, and the existence of environmental or wildlife review have not been established in the materials presently available.

II. IMMEDIATE LEGAL AND REGULATORY ISSUES

A. CLEAN WATER ACT §301 — 33 U.S.C. §1311

Section 301 generally prohibits the discharge of pollutants into waters of the United States except in compliance with the Clean Water Act. Soil, rock, sand and similar material may constitute pollutants and, when used to replace aquatic area with dry land or change the bottom elevation, may constitute fill material. The U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (USACE) should determine whether the affected feature is jurisdictional under current law; whether the documented material constitutes a regulated discharge; who discharged it; what authorization applies; and whether enforcement, removal of fill, mitigation or restoration is

required.

B. CLEAN WATER ACT §404 — 33 U.S.C. §1344

Section 404 regulates discharges of dredged or fill material into waters of the United States. USACE should determine the jurisdictional status of the feature and any connected waters; whether a §404 permit, nationwide permit, regional/general permit, individual permit, or no permit was required; whether all conditions were satisfied; and whether a jurisdictional determination or prior Corps action exists.

C. §404(f)(1) MAINTENANCE EXEMPTION AND §404(f)(2) RECAPTURE

Federal law expressly exempts certain discharges associated with maintenance, but not construction, of drainage ditches. That exemption is not a blanket exemption for all work performed in a drainage facility. Under §404(f)(2), a discharge otherwise associated with an exempt activity requires a permit when it is incidental to an activity whose purpose is bringing an area of waters of the United States into a use to which it was not previously subject and where flow or circulation may be impaired or the reach of such waters reduced. USACE should determine whether the work is genuine maintenance, whether the feature is a 'drainage ditch' within the exemption, and whether the statutory recapture provision applies.

D. CLEAN WATER ACT §404(b)(1) GUIDELINES — 40 C.F.R. PART 230

If §404 authorization is required, the Corps/EPA should determine whether applicable avoidance, minimization and mitigation requirements were satisfied. The administrative record should identify consideration of less damaging practicable methods, including garbage removal, targeted sediment removal, phased maintenance, wildlife exclusion/rescue, preservation of portions of aquatic habitat, and restoration or compensatory mitigation where required.

E. CLEAN WATER ACT §402 / NPDES / MS4

EPA and the New Mexico Environment Department (NMED) should determine whether the work, stormwater, dewatering, sediment, pollutants, garbage/floatables, or downstream discharge implicates NPDES or municipal separate storm sewer system requirements. The investigation should identify the actual owner/operator and the permit coverage applicable to the affected facility rather than assume responsibility from geographic proximity alone.

F. CONSTRUCTION STORMWATER AND DEWATERING

If the project meets applicable disturbance or discharge thresholds, regulators should determine whether construction-stormwater permit coverage, a Stormwater Pollution Prevention Plan, inspections, erosion/sediment controls, stabilization measures or other authorization was required. EPA's 2022 Construction General Permit contains New Mexico-specific requirements concerning anticipated construction dewatering. The responsible entity should disclose where all pumped water went; whether it carried sediment, pollutants or floatables; whether water quality was evaluated; whether pumps were screened; and whether aquatic animals were entrained, stranded or killed.

G. ENDANGERED SPECIES ACT §7 — 16 U.S.C. §1536

If a federal agency authorized, funded, permitted or carried out an action, including an applicable §404 or §408 action, that agency must determine its duties under ESA §7. The record should identify any official species list, biological assessment, consultation, concurrence, Biological Opinion, incidental-take statement, or written determination that consultation was not required.

H. ENDANGERED SPECIES ACT §9 — 16 U.S.C. §1538

The documented beaver is not itself a federally listed endangered species. Nevertheless, the biological community has not been fully identified. USFWS should determine whether federally listed wildlife is present and whether any conduct could constitute prohibited take. No claim of a §9 violation should be made without identifying a protected species and the legally relevant conduct.

I. RIO GRANDE SILVERY MINNOW AND DESIGNATED CRITICAL HABITAT

The Rio Grande silvery minnow is federally endangered. USFWS's current critical-habitat rule designates approximately 157 miles of the Middle Rio Grande from Cochiti Dam downstream to a utility-line crossing in Socorro County, with specified exclusions. This complaint does not assert that silvery minnows occupy this drainage feature. It requests determination of the feature's actual hydrologic/discharge relationship to the Middle Rio Grande and whether any federal action may affect the species or designated critical habitat.

J. MIGRATORY BIRD TREATY ACT — 16 U.S.C. §703 ET SEQ.

Before additional vegetation removal, burial or habitat disturbance, qualified personnel should determine whether protected migratory birds, eggs, nests or dependent young are present and whether the contemplated conduct is prohibited under the Act and current implementing law. The existence of birds or nests alone should not be characterized as a proven MBTA violation without the required legal elements.

K. NATIONAL ENVIRONMENTAL POLICY ACT — 42 U.S.C. §4321 ET SEQ.

NEPA applies to qualifying federal agency actions; it does not independently govern purely local work merely because environmental effects exist. If a federal permit, funding decision, §408 permission or other qualifying federal action exists, the responsible federal agency should identify the applicable categorical exclusion, Environmental Assessment/FONSI, Environmental Impact Statement, or other NEPA record.

L. 33 U.S.C. §408

USACE should determine whether the project alters or occupies a federally authorized Corps civil-works project in a manner requiring §408 permission. If §408 does not apply, USACE should state that conclusion; if it does, the authorization and environmental review should be disclosed.

M. NATIONAL HISTORIC PRESERVATION ACT §106 — 54 U.S.C. §306108

If the activity is a federal undertaking, the responsible federal agency should determine whether §106 review was required and disclose any historic-property, archaeological or tribal-consultation review.

N. NEW MEXICO BEAVER/FURBEARER REGULATION — 19.32.2 NMAC

Beaver are regulated furbearers in New Mexico. Current rules establish an ordinary statewide beaver season of April 1–30 and November 1–March 31, making August outside the ordinary season. This does not by itself establish an unlawful governmental take because wildlife-control or agency-authorized activity may be governed by separate authority or exceptions. The New Mexico Department of Wildlife should determine whether any beaver was or will be captured, trapped, killed, removed or otherwise subjected to regulated take; what authority applies; whether an occupied dam, lodge or bank den exists; and whether dependent young or additional beavers are present.

O. NEW MEXICO AMPHIBIANS AND REPTILES — 19.35.10 NMAC

Turtles, frogs and other reptiles/amphibians should be identified to species. 19.35.10 NMAC should not be presented as a general prohibition on every incidental injury caused by public works; it principally regulates specified take/collection and protects listed species. NMDOW should determine whether any state- or federally protected species is present and what authorization or protective measures apply.

P. NEW MEXICO WILDLIFE CONSERVATION ACT — NMSA 1978, §§17-2-37 THROUGH 17-2-46

NMDOW should determine whether any wildlife protected under New Mexico's threatened/endangered species framework inhabits or uses the site and whether state authorization or protective measures are required.

Q. NEW MEXICO WATER-QUALITY REQUIREMENTS

NMED should independently determine whether New Mexico surface-water-quality standards, antidegradation requirements, discharge controls, stormwater requirements or other state water-quality authorities apply to the affected feature or any downstream discharge. Characterization of the site as flood-control infrastructure should not substitute for the required jurisdictional and permit analysis.

III. CONSERVATION AND PUBLIC-INFRASTRUCTURE SIGNIFICANCE

Albuquerque is an arid environment in which persistent aquatic and riparian habitat is comparatively scarce. An engineered drainage facility can simultaneously perform a flood-control function and provide ecological functions. The documented presence of a live beaver, together with reported turtles, frogs and other aquatic wildlife, is therefore relevant to the scope and sequencing of responsible maintenance.

The visible accumulation of floating garbage presents a separate management failure that should be addressed directly. Where feasible and consistent with flood safety, agencies should evaluate removal of trash and floatables, targeted vegetation/sediment management, wildlife-protective work sequencing, beaver-coexistence measures, and other engineering alternatives before eliminating established aquatic habitat. Flood-control obligations and wildlife conservation are not inherently incompatible.

IV. REQUIRED FACTUAL DETERMINATIONS BEFORE FURTHER IRREVERSIBLE WORK

1. Exact facility/project name, parcel/facility ownership, operator and maintenance responsibility.

2. Identity of every agency, contractor and decision-maker that authorized, performed or supervised the August 2026 work.

3. Precise drainage path, receiving water, and hydrologic relationship to the Rio Grande or other regulated waters.

4. Clean Water Act jurisdiction and the existence of any USACE jurisdictional determination.

5. All §404 permits, general permits, preconstruction notifications, exemptions or no-permit-required determinations.

6. Whether §404(f)(1) drainage-ditch maintenance is claimed and, if so, the factual and legal basis; whether §404(f)(2) recapture applies.

7. All NPDES/MS4, construction-stormwater and dewatering permits/authorizations applicable to the work.

8. Destination, quantity and quality of pumped/dewatered water and any downstream sediment, pollutant or floatable discharge.

9. All biological surveys, wildlife observations, rescue/relocation plans and wildlife-control authorizations.

10. Presence and status of the documented beaver; any dam, lodge, bank den, additional beavers or dependent young.

11. Identification of turtles, frogs, fish, birds and other wildlife to species where practicable.

12. Any federal funding, permit, authorization or other federal nexus and all ESA, NEPA, §408 and NHPA review.

13. Whether animals were buried, crushed, entrained, stranded, injured or killed during the work.

14. Whether deposited fill is authorized and, if not, whether removal, mitigation or restoration is required.

15. Alternatives considered before choosing dewatering/filling, including trash removal and less destructive maintenance methods.

V. REQUEST FOR IMMEDIATE ADMINISTRATIVE ACTION

1. Maintain or issue a stop-work directive, to the extent legally authorized, against additional filling, grading, bulldozing, vegetation removal or dewatering until the threshold jurisdictional, permit and wildlife questions are resolved.

2. Send qualified wildlife professionals to the site before further disturbance.

3. Protect and document the live beaver and determine whether an occupied dam, lodge, bank den, additional adults or dependent young are present.

4. Identify aquatic and riparian wildlife and implement lawful rescue/relocation measures where appropriate.

5. Obtain or confirm a USACE Clean Water Act jurisdiction/permit determination.

6. Investigate NPDES/MS4, construction-stormwater, sediment, floatables, dewatering and receiving-water compliance.

7. Determine the destination and environmental effects of pumped water.

8. Determine whether ESA, NEPA, §408, MBTA or NHPA requirements are triggered.

9. Preserve all evidence and investigate reports of wildlife mortality or burial.

10. Remove accumulated garbage in a manner that avoids unnecessary injury to wildlife.

11. Require removal of unauthorized fill, mitigation and/or restoration if violations are established.

12. Develop a long-term maintenance plan that preserves necessary flood-control capacity while retaining functioning aquatic/riparian habitat where reasonably practicable.

VI. EVIDENCE-PRESERVATION AND PUBLIC-RECORDS REQUEST

Please preserve all potentially relevant records, including project plans; engineering and hydrology studies; contracts; work orders; permits and applications; jurisdictional determinations; claimed exemptions; biological surveys; wildlife observations; photographs/video; drone and historical imagery; inspection and maintenance records; trash/mosquito complaints; MS4 and stormwater records; SWPPPs; dewatering and discharge records; water-quality data; alternatives and mitigation analyses; funding records; emails; texts; internal messages; contractor communications; and interagency communications. Please specifically preserve historical evidence showing how long standing water, aquatic vegetation, beaver activity and other wildlife habitat existed before the August 2026 operation.

VII. PRIMARY AGENCIES FOR SERVICE

Agency	Contact	Requested Review
U.S. Army Corps of Engineers — Albuquerque Regulatory Office	4101 Jefferson Plaza NE, Albuquerque, NM 87109-3435 | 505-342-3280 | SPA-RD-NM@usace.army.mil	Request CWA §404 jurisdiction/permit/exemption review, potential-violation review, restoration/enforcement review, and §408 determination if applicable. As of May 1, 2026, USACE Albuquerque expects new Regulatory Program requests to be submitted through its Regulatory Request System (RRS).
U.S. Environmental Protection Agency — Region 6	1201 Elm Street, Suite 500, Dallas, TX 75270 | 214-665-2200 | 800-887-6063	Request CWA/NPDES/MS4, construction-stormwater, dewatering and receiving-water review.
U.S. Fish & Wildlife Service — New Mexico Ecological Services	2105 Osuna Road NE, Albuquerque, NM 87113 | 505-230-3837 | nmesfo@fws.gov	Request ESA/listed-species/critical-habitat and federal-consultation review where applicable.
New Mexico Department of Wildlife	Albuquerque: 7816 Alamo Road NW, Albuquerque, NM 87120 | 505-222-4700 | Headquarters: 505-476-8000	Request immediate wildlife assessment and determination of authority governing any beaver or other wildlife take/removal.
New Mexico Environment Department — Surface Water Quality Bureau	505-827-0187	Request state/federal water-quality, stormwater, dewatering, sediment and receiving-water review.
Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA)	2600 Prospect Avenue NE, Albuquerque, NM 87107 | 505-884-2215	Request stop-work pending review and disclosure of facility identity, project authorization, permits/exemptions, environmental review, dewatering records, wildlife review and contractors.
City of Albuquerque	311 / 505-768-2000	Request coordinated City environmental, stormwater, wildlife and public-infrastructure review and disclosure of any City role.
Bernalillo County Public Works / Stormwater	505-848-1503	Request determination of County ownership, operation, easement or stormwater involvement.
Middle Rio Grande Conservancy District	505-247-0234	Request determination of any MRGCD property, drain, wasteway, easement, hydrologic or Rio Grande infrastructure connection.

VIII. CONGRESSIONAL OVERSIGHT REQUEST

Copies may be provided to the offices of New Mexico's U.S. Senators and the congressional representative for the affected Albuquerque district with a request for an urgent congressional inquiry to EPA, USACE and USFWS concerning federal jurisdiction, permitting, federal funding/action, endangered-species implications, and whether destructive work should remain suspended during agency review.

IX. EVIDENCE TO ATTACH

1. Video clearly documenting the live beaver.
2. Photographs/video of turtles, frogs or other wildlife, if available.

3. Photographs of standing water, aquatic vegetation and accumulated floating garbage.
4. Photographs/video showing trucks or heavy equipment depositing soil/fill.
5. Location evidence identifying the water feature directly east of 6440 Coors Blvd NW.
6. Dates/times of observed work and names/contact information of eyewitnesses willing to provide statements.
7. Before-work photographs/video or historical imagery, if available.

X. CONCLUSION

The present evidence is sufficient to justify immediate regulatory review, but it is not sufficient to responsibly label every potentially applicable statute a proven violation. The central legal questions — jurisdiction, permit coverage, claimed exemptions, federal nexus, species presence, dewatering destination and wildlife impacts — should be resolved before additional irreversible alteration. If required authorization was absent or permit conditions were violated, the appropriate agencies should pursue enforcement, mitigation and restoration.

REQUESTED DISPOSITION: Preserve the site and evidence; prevent additional avoidable wildlife harm; determine jurisdiction and permit status; identify all wildlife and receiving waters; investigate the August 2026 work; and require corrective action and habitat restoration where the law requires it.

AUTHORITATIVE SOURCES / LEGAL REFERENCES

Clean Water Act §§301, 402, 404 — 33 U.S.C. §§1311, 1342, 1344.

EPA, Overview of Clean Water Act Section 404 (including statutory text of §404(f)(1) and §404(f)(2)).

EPA, Exemptions to Permit Requirements under CWA §404 (maintenance, but not construction, of drainage ditches; recapture limitations).

40 C.F.R. Part 230 — §404(b)(1) Guidelines.

EPA, 2022 Construction General Permit, including New Mexico-specific dewatering provisions.

Endangered Species Act §§7 and 9 — 16 U.S.C. §§1536, 1538.

U.S. Fish & Wildlife Service, 68 Fed. Reg. 8088 (Feb. 19, 2003), final critical-habitat designation for Rio Grande silvery minnow.

Migratory Bird Treaty Act — 16 U.S.C. §703 et seq.

National Environmental Policy Act — 42 U.S.C. §4321 et seq.

33 U.S.C. §408.

National Historic Preservation Act §106 — 54 U.S.C. §306108.

19.32.2 NMAC — New Mexico furbearer regulations.

19.35.10 NMAC — New Mexico native amphibian/reptile provisions.

NMSA 1978, §§17-2-37 through 17-2-46 — Wildlife Conservation Act.

Submitted by: [NAME]
[CITY, STATE]
[EMAIL]

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