

Upper Rio Grande Legal and Policy Assessment to Support Riparian Connectivity

June 28, 2022

Executive Summary

This analysis is part of a four-part assessment of the needs and opportunities for conserving and restoring riparian connectivity in the Upper Rio Grande Valley in New Mexico and Colorado. This document provides an orientation to federal, state, and local laws, land grant and acequia governance, and Tribal/Pueblo rights to manage water and land uses that have specific bearing upon riparian corridors.

The complex ecological intersection of land and water that creates riparian corridors presents a challenge for the dominant legal systems that govern resource management and use. Land management is usually the subject of laws and policies distinct from those addressing surface water use, which are in turn separate from groundwater and water quality concerns. Riparian areas fall in a gray zone for conservation and management, and riparian corridors are seldom addressed at all. Opportunities for conservation action can be found by utilizing relevant legal authorities, as well as through existing partnerships and new initiatives involving a diverse array of public and private entities.

Throughout this analysis, examples illustrate a variety of ways in which conservation opportunities can strengthen and reinforce the good work already underway in the Upper Rio Grande Valley, while acknowledging that riparian areas are not included in many conservation initiatives. This report provides context for riparian conservation and presents key priorities for future work. Topics highlighted in this analysis include:

- National conservation and infrastructure initiatives: new sources of funding and priorities for riparian conservation
- Tribal and Pueblo sovereignty: co-management and prioritized restoration projects
- Acequias' conservation initiatives: protecting water resources and engaging in watershed restoration
- National Forests' plan implementation: corridor designation and landscape-scale restoration priorities
- Bureau of Land Management actions: improved planning and opportunities for restoration
- State agencies' authorities: prioritize riparian habitat for conservation and restoration
- Local agencies' and conservation districts' authorities: regulation, restoration, education
- Private land incentives: Federal incentive programs for conservation and restoration
- Federal water agencies' operations: re-operating dams, restoration funding and research
- State in-stream flow programs: emerging opportunities to protect water to support riparian corridors

- Local water managers' interest in water source protection: strengthen connection with riparian corridors, conservation policies, and investment in restoration
- Federal Clean Water Act: protective designations, funding for restoration
- Federal Endangered Species Act: regulatory and incentive-based riparian habitat conservation
- National Environmental Policy Act: broad public engagement potential, opportunity to assess impacts on riparian corridors and evaluate alternatives

Summary of Legal and Policy Opportunities for Riparian Conservation and Restoration

National Conservation Initiatives

In addition to the statutory, regulatory, and incentive programs summarized here, several recent and pending national policy initiatives will offer expanded opportunities to conserve riparian corridors in the years to come:

- The **Bipartisan Infrastructure Law (as enacted in the Infrastructure Investment and Jobs Act or IIJA)** and associated State investments are resulting in a large influx of funding that could be utilized by Tribes, States or organizations to implement wetland and riparian restoration projects or water enhancement efforts
- **America the Beautiful** (also referred to as 30x30) initiative, which aims “to conserve, connect, and restore 30 percent of our lands and waters by 2030 for the sake of our economy, our health, and our well-being”
- **Great American Outdoors Act**, which mandates full and permanent funding of the Land and Water Conservation Fund
- **Recovering America's Wildlife Act**, currently under consideration by Congress, promises to provide states, territories, and tribes with \$1.39 billion annually to catalyze proactive, on-the-ground, collaborative efforts to restore essential habitat and implement key conservation strategies, as described in each state's Wildlife Action Plan

Opportunities to Support Tribal and Pueblo Riparian Conservation

The following actions would strengthen Tribal and Pueblo sovereign authority over land and water within their boundaries, and expand emerging opportunities to co-manage federal lands and waters to support riparian corridor conservation:

- Advocate to include explicit language regarding co-management in legislative or administrative actions designating special conservation areas for riparian corridors on federal lands and waters and seek specific designations for riparian areas with special importance to Tribal and Pueblo people.
- Ensure that federal land and resource plans adequately address Tribal and Pueblo rights and interests (including riparian corridor values), and that the agencies engage with Tribal and Pueblo partners early in the process to inform all elements of the planning documents
- Advocate for additional federal and private funding to support Tribal- and Pueblo-led riparian conservation initiatives. Support Tribes' and Pueblo's access to Infrastructure

Investment and Jobs Act, National Fish and Wildlife Foundation, Natural Resource Conservation Service, and U.S. Fish and Wildlife Partners for Wildlife funding.

- Share riparian connectivity ecological assessment data with Tribal and Pueblo natural resource staff to identify potential conservation or restoration opportunities that align with their priorities, and leverage to pursue funding.

Opportunities to Support Acequias' Conservation Actions

Acequias may be active partners in conserving riparian corridors by exercising their legal powers to:

- Protest applications for water transfers that might be detrimental to existing water rights, are contrary to conservation of water, and/or will be detrimental to the public welfare.
- Protect legal easements to gain access to acequia ditches on private and public property, providing adequate width to allow for reasonable maintenance, use, and improvements to the ditch and thus preventing development that might compromise the riparian corridor.
- Engage in restoration activities on lands throughout the watershed serving the acequia, in collaboration with public and private partners.
- Support land grant boards, acequias, and their associations to access funding to restore or conserve priority riparian habitat (e.g., National Fish and Wildlife Foundation 'America the Beautiful Challenge').
- Actively support the inclusion of acequias in Colorado water management conversations to highlight the importance of acequias in the Rio Grande valley.
- Explore and replicate successful efforts to leverage federal funding to support acequia stewardship that conserves riparian habitats (e.g., Colorado Open Lands work through USDA's Natural Resource Conservation Service programs).
- Participate in the annual Congreso de las Acequias to learn more about conservation opportunities with acequias in both Colorado and New Mexico.
- Share riparian connectivity ecological assessment data with acequia associations to identify potential conservation or restoration opportunities that align with their priorities, and leverage to pursue funding.

Riparian Conservation Opportunities on National Forests:

With forest plan revisions fully or nearly completed for all three national forests in the Upper Rio Grande Valley, bolstered by the Riparian and Aquatic Ecosystem Strategy (for national forests in New Mexico), there is a solid foundation for riparian corridor conservation actions aligned with and helping to implement these priorities. For example:

- Assure that riparian management zones, as identified in Forest Plans, are prioritized for restoration, and restrict future management activities to protect riparian values
- Use the Forest Service Watershed Condition Framework to indicate target areas for additional investments to protect and restore watershed and riparian conditions
- Evaluate eligible and suitable Wild, Scenic, and Recreational Rivers to prioritize advocacy for Congressional designation Advocate for the inclusion of critical riparian habitats in

Forest Service Congressional or Administrative designations that protect landscapes and significant values (e.g., Wilderness Areas, Special Management Areas, etc.),

- On the Santa Fe and Carson National Forests, prioritize, garner community support for, and support implementation of riparian restoration projects prioritized in the Northern New Mexico Riparian, Aquatic, and Wetland Restoration Project, which can be pursued with expedited permitting and review
- Share riparian connectivity ecological assessment data with USFS staff to identify potential conservation or restoration opportunities that align with their priorities.
- Explore the 2-3-2 Cohesive Strategy Partnership's water resources goal to apply potential project funding to benefit riparian corridors through forest restoration activities
- Elevate and continue support for riparian restoration partnerships that have already prioritized, planned, and implemented projects in national forests and surrounding lands (e.g., the Rio Grande Headwaters Restoration Project); supporting and helping to expand their work would have substantial benefits for riparian corridor conservation
- In areas where public land grazing is leading to consistent conflicts with riparian conservation and ranchers are interested in reducing conflict, explore the opportunity for compensating ranchers for relinquishing grazing permits and work with federal staff to consider permanent retirement of critical allotments.

Opportunities for Riparian Corridor Restoration on BLM Lands:

- Incorporate riparian corridor and connectivity standards and requirements into pending BLM plan revisions, including the Rio Grande del Norte National Monument planning process
- Strengthen and support strong conservation partnerships already planning, prioritizing, and implementing restoration projects for maximum impact. These partnerships may provide particular opportunities to work with private landowners as BLM-managed riparian areas and wetlands are heavily intermixed with private lands and other public lands
- Nongovernmental partners can enter into cooperative agreements with the BLM to achieve mutual conservation goals such as riparian corridor inventory and restoration projects
- State and tribal governments may enter into cooperative agreements with the BLM to achieve conservation outcomes, including enhanced stream flows to support riparian corridors.
- Share riparian connectivity ecological assessment data with BLM staff to identify potential conservation or restoration opportunities that align with their priorities.
- State-level BLM leadership on riparian conservation strategies could replicate the Forest Service's Southwestern Riparian and Aquatic Ecosystem Strategy, as well as the landscape-scale riverscape restoration strategy developing in the Montana-Dakotas State Office
- In areas where public land grazing is leading to consistent conflicts with riparian conservation and ranchers are interested in reducing conflict, explore the opportunity

for compensating ranchers for relinquishing grazing permits and work with federal staff to consider permanent retirement of critical allotments.

Opportunities to Conserve Riparian Corridors in Cooperation with State Lands Agencies

- Review current management practices for state trust land parcels placed in Colorado's Stewardship Trust (e.g., La Jara). Evaluate existing management practices and work with agency to foster riparian connectivity and potential restoration efforts.
- Assess State Forest Action Plans to identify prioritized areas for riparian restoration or conservation to support forest health; projects matching these priorities will maximize potential collaboration and funding opportunities. For example, Colorado's State Forest Action Plan identified "riparian habitat restoration" as the 4th highest priority resource goal, with specific HUC 12 subwatersheds prioritized in western Conejos and Rio Grande Counties. And New Mexico's State Forest Action Plan identifies top watersheds in the Upper Rio Grande valley that are of highest climate risk to riparian corridors.
- Advocate for state programs and funding aimed at conserving wildlife corridors that currently emphasize big-game species and terrestrial habitat to be broadened to include riparian and aquatic corridors.
- Share riparian connectivity ecological assessment data with New Mexico's Forest and Watershed Health Office to identify potential forest and watershed restoration opportunities that align with their priorities.
- Work with New Mexico's Forestry Division District Offices and the Colorado State Forest Service Alamosa Office to elevate riparian restoration and conservation best management practices for private landowners.

Opportunities to Work with Local Planners for Riparian Corridor Conservation:

- Engage with Upper Rio Grande counties and municipalities to learn local priorities and raise awareness of the benefits of adopting development regulations aimed at protecting riparian areas and restoring impacted areas (see Santa Fe County's Sustainable Development Code)
- Collaborate with Soil and Water Conservation Districts to consider district-wide riparian conservation or restoration planning to prioritize project funding and foster voluntary activities to improve connectivity
- Share riparian connectivity ecological assessment data with New Mexico's Association of Counties (especially in the Upper Rio Grande valley) to identify potential riparian conservation or restoration opportunities that align with their priorities.
- Local parks and open space programs can protect and manage riparian corridors with conservation priorities and connectivity as priorities

Opportunities for Private Landowners to Support Riparian Corridor Conservation:

- Engage with Upper Rio Grande private landowners and landowner associations (e.g., New Mexico Land Grant Council) to identify priority riparian restoration needs and opportunities.

- Share riparian connectivity ecological assessment data with private landowners in the Upper Rio Grande valley (through partners such as the Colorado Cattlemen’s Agricultural Land Trust, the Rio Grande Agricultural Land Trust, or Soil and Water Conservation Districts) to identify potential riparian conservation or restoration opportunities that align with private landowner priorities.
- Support landowners in accessing federal or state assistance for riparian restoration projects (e.g., NRCS programs, Colorado Wildlife Habitat Program, etc.).
- In Colorado, where private landowners manage 5,900 acres of *private* lands in the Rio Grande Natural Area, foster support for riparian conservation priorities that align with the Rio Grande Natural Area Management Plan.

Opportunities to Conserve Riparian Corridors with Federal Water Agencies:

- Explore the Bureau of Reclamation’s WaterSMART program as a source of riparian restoration funding. This program includes up to 75 percent cost-share funding for restoration projects that benefit plant and animal species, fish and wildlife habitat, riparian areas, and ecosystems directly influenced by water resources management.
- Engage with Bureau of Reclamation’s current Basin Study for the URG as an opportunity to have input on river management; e.g., through the Basin Study NGO environmental focus group.
- Work with the Army Corps and The Nature Conservancy to expand their Sustainable Rivers Program to include the federal facilities in the Upper Rio Grande. This program could complement other strategies to restore riparian corridors through proven methods for re-operating dams and modernizing infrastructure to increase their benefits, with particular focus on floodplains.
- Support the Army Corps’ ecosystem research arm in their planning of at least one reservoir riparian rehabilitation in the Southwestern U.S. to demonstrate capabilities for improving water quality and creating/enhancing sensitive species habitat, and to inform other projects where water quality and/or endangered species habitats are a priority

Opportunities to Support Riparian Corridors with State-level Water Policy

- Support and encourage efforts of the Colorado Water Conservation Board to appropriate and acquire through transfer water rights that are critical for in-stream flows “to preserve the natural environment to a reasonable degree.” In 2020 the program expanded to allow temporary water loans (allowing enhanced flows during drought) and augmentation plans to allow creative use of “seed flows” to restore dewatered stream stretches.
- Advocate for funding New Mexico’s Strategic Water Reserve with nonrecurring or capital funds. Adequate support for staffing the Reserve program in the Interstate Stream Commission and funds to purchase water rights would be a meaningful way of providing water to maintain the ecological functioning of the state’s rivers.
- Advocate for legislation to broaden the purposes of New Mexico’s Strategic Water Reserve to include purposes outside of the acquisition of water for Compact compliance

and protecting threatened and endangered species, to include waters that may benefit riparian ecosystems.

- Track water transfers in the Upper Rio Grande valley that may negatively affect riparian corridors, and support protests of transfers that are contrary to the public interest. Engage attorneys and landowners to foster better understanding of the potential for privately held instream flow rights in New Mexico.
- The River Stewardship Grant program of the New Mexico Environment Department could be a useful proponent of restoring riparian corridors. Support substantial state funding for the program; link the program to the Strategic Water Reserve. Explore the potential for a Water Trust in New Mexico, that can serve as an agent for the state to create more efficiencies and opportunities for water transfers that improve in-stream flow.

Opportunities to Work with Local Water Managers to Conserve Riparian Corridors:

- Share riparian connectivity ecological assessment data with New Mexico watershed districts to identify potential conservation or restoration opportunities that align with their priorities.
- Support efforts such as Colorado's Rio Grande Water Conservation District actions to restore and conserve riparian areas.
- Explore the potential for the Rio Grande Water Fund's 'Stream, Wetland and Aquatic Restoration Program' to provide information, best practices, and financial support for riparian restoration "to supplement the forest work and enhance overall watershed health"
- Explore the potential for municipal watershed management plans in the Upper Rio Grande valley, learning from efforts such as those taken by the City of Santa Fe.

Clean Water Act Opportunities for Riparian Corridor Conservation

- Clean Water Act Section 319 grants (combined with other state and federal cost-share grants such as NMED River Stewardship grants and Colorado Water Conservation Board grants) should be employed to provide substantial financial support for planning and implementing riparian restoration to reduce nonpoint source pollution runoff in water quality-impaired streams.
- The federal Five Star Urban Waters Restoration Grant, administered by the National Fish and Wildlife Foundation could be expanded to cities and urban areas throughout the project area.
- Evaluate riparian connectivity ecological assessment data to identify high priority conservation areas that may warrant New Mexico's designation of Outstanding National Resource Waters along streams in National Forests.
- Clean Water Act Section 404 should be proactively employed to conserve, and mitigate loss of, wetlands. This could complement efforts to conserve the riparian corridors of which they are a part. Compensatory restoration to mitigate for wetland loss can be implemented to strengthen riparian corridor connections.

Opportunities to Conserve Riparian Corridors to Support Species Recovery

- Where federally-listed species' recovery plans include conservation of riparian habitat, leverage federal and/or state funding to support conservation or restoration activities.
 - Example: New Mexico's recovery plan for the Meadow Jumping Mouse includes protecting riparian areas from threats from over-grazing
- The use of conservation agreements aimed designed to prevent the listing of a species listing can result in opportunities for habitat restoration, including riparian corridor conservation.
 - Example: The Rio Grande cutthroat trout inhabits both the mainstem and many of its tributaries from Colorado into New Mexico. A conservation agreement and conservation strategy adopted by state, federal, and tribal entities in 2013 aimed at accelerating conservation measures to support recovery and thus avoid the need to list this species under the ESA.
- ESA listing and compounding pressures from drought can catalyze multi-species collaborative partnerships to take action to improve water management and commit to habitat conservation, including riparian corridors along with other measures
 - Example: The Middle Rio Grande Endangered Species Collaborative Program unites federal, state, and local governmental entities, Indian Tribes and Pueblos, and non-governmental organizations committed to protecting and recovering federally listed species in the Middle Rio Grande Valley, while also preserving the area's existing and future water uses. Congress formalized the program in federal legislation in 2006.

Addressing Riparian Corridor Conservation in NEPA Review

- As federal NEPA processes arise in the Upper Rio Grande valley of New Mexico and Colorado, the mandate for public and interagency engagement provides an opportunity to expand scope of analysis and make sure riparian corridors are addressed
- In New Mexico, share riparian connectivity ecological assessment data with Environmental Protection Agency to assure that critical riparian conservation and restoration areas are considered in NEPA, with a focus on landscape scale analysis and planning