



NEW MEXICO ENVIRONMENT DEPARTMENT
Surface Water Quality Bureau

Public Involvement Plan (PIP)
for the State of New Mexico Clean Water Act §401
Individual Water Quality Certification
of United States Army Corps of Engineers
Permit # SPA-2022-00092-ABQ
for the United States Bureau of Reclamation Los Lunas
Channel and Floodplain Maintenance Project at River Mile
163

October 2022
APPROVAL PAGE

Shelly Lemon
Chief, Surface Water Quality Bureau

Date

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Date

I. Public Involvement Plan (PIP) Overview

The New Mexico Environment Department (Department), Surface Water Quality Bureau (Bureau) developed this Public Involvement Plan (PIP) for the State of New Mexico Clean Water Act Section 401 Individual Water Quality Certification of United States Army Corps of Engineers (USACE) Permit # SPA-2022-00092-ABQ for the United States Bureau of Reclamation (USBOR) Los Lunas Channel and Floodplain Maintenance Project at River Mile 163.

The Bureau encourages public comments for certifying the Los Lunas Channel and Floodplain Maintenance Project (20.6.2.2002.F NMAC). The purpose of this PIP is to provide public participation opportunities and information that may be needed to participate in the Clean Water Act Section 401 (CWA §401) Water Quality Certification (Certification) process. This PIP integrates information about the community and identifies resources needed by the Bureau to successfully incorporate community participation. The PIP identifies the Department staff and resources needed to accomplish these activities. The Bureau will meet the public participation requirements for certifying this individual certification by following this PIP, which includes all applicable policy, regulatory, and statutory public participation requirements.

In developing this PIP, state-wide community participation needs were assessed to ensure appropriate promotion of public outreach by identifying whether there is a combination of environmental and demographic factors (i.e., low income community, minority community, limited English proficiency individuals, Linguistically Isolated Households, etc.) that may impact public participation.¹ This assessment identifies community outreach needs and provides for public access opportunities above and beyond statutorily mandated requirements, and underscores the provision of adequate public access to information about the CWA §401 Certification.

As much as possible, public participation and informational activities related to the CWA §401 Certification will be held within the timelines outlined in the table below. The 30-day comment period shall begin on the date of the public notice provided under Subsection D and F of 20.6.2.2002 NMAC.

This individual CWA §401 Certification impacts a relatively large community of Spanish speakers, and the Bureau will provide pertinent information in both English and Spanish in public meeting notices, public comment notices, and other announcements (radio broadcasts, brochures, signs, postcards, fact sheets, etc.), as necessary. During public comment periods, hardcopies of relevant documents may be reviewed at the information repositories listed in “Public Participation and Outreach Activities” – Section V.H.

More detailed information about planned Bureau outreach is available in this PIP.

Activity	Dates
Notice PIP (invite public input)	October 21, 2022 through November

¹ See IV. Location and Demographics – Demographic Summary below.

Activity	Dates
	21, 2020 (since day 30 is on a Sunday)
Public Notice for the CWA §401 Certification of the Individual Permit	October 21, 2022 through November 21, 2020 (since day 30 is on a Sunday)
Public Comment Period	30 days
Public announcements (radio, brochures, signs, postcards, factsheets, etc.)	As needed
Bureau sends the CWA §401 Certification to the USACE	December 25, 2022 i.e. 90-day Reasonable Period of Time. A short extension may be requested, not to exceed 1-year.

This PIP is a “living” document that may be amended after considering public comments and feedback. The Bureau Chief provides final approval of the PIP and amendments.

II. **Contacts**

Bureau contacts for questions regarding the Individual CWA §401 Certification of the Los Lunas Channel and Floodplain Maintenance Project, the Bureau’s website, or this PIP, are listed below:

Abraham Franklin, Program Manager
Surface Water Quality Bureau
1190 South St. Francis Dr.
Santa Fe, NM 87505
Phone: (505) 827-2798
Email: Abraham.Franklin@env.nm.gov

Alan Klatt, Team Leader
Surface Water Quality Bureau
1190 South St. Francis Dr.
Santa Fe, NM 87505
Phone: (505) 819-9623
Email: Alan.Klatt@env.nm.gov

If you need to contact the Bureau regarding the Individual Water Quality Certification of United States Army Corps of Engineers Permit # SPA-2022-00092-ABQ for the Los Lunas Channel and Floodplain Maintenance Project, please call or email the bureau contacts listed above.

A. Non-English Language Speaker Assistance and Accommodations

Non-English speakers may call the Bureau contact listed in this PIP and request language assistance services, such as an interpreter, so they can learn more about the Los Lunas Channel and Floodplain Maintenance Project.

B. Department Websites

New Mexico Environment Department - <https://www.env.nm.gov/>
Surface Water Quality Bureau - <https://www.env.nm.gov/surface-water-quality/>

C. CWA §401 Water Quality Certification Website

The Bureau maintains a website location for information on CWA §401 Certifications (see website address below). The website will be kept up to date and has information about the process and important documents.

<https://www.env.nm.gov/public-notice/>
<https://www.env.nm.gov/surface-water-quality/dredgeandfillactivities/>

D. The Document the Bureau is Reviewing under CWA §401

Additional information regarding the Los Lunas Channel and Floodplain Maintenance Project will be available at the Corps' website <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/> or upon request.

III. Regulatory Framework

The U.S. Army Corps of Engineers (USACE) administers a regulatory program to implement Section 10 of the Rivers and Harbors Appropriation Act and Section 404 of the Clean Water Act (CWA). The Regulatory Division issues or authorizes permits, which are generally required for earth-moving work within wetlands, lakes, and streams (including ephemeral streams or arroyos). Under CWA §401, the CWA provides States or Tribes the opportunity to certify CWA §404 permits ("dredge and fill" permits). In New Mexico, this certification process depends on where your project is located and the kind of permit the USACE will use.

CWA §401 provides States, Tribes, or Pueblos the opportunity to certify CWA §404 permits. The Bureau's CWA §401 certification ensures that the federal permit or action is consistent with State law and otherwise complies with Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process (WQMP/CPP) including Total Maximum Daily Loads (TMDLs), and the current Antidegradation Policy. The Department's permit certification process is outlined in CWA §401, and New Mexico's Administrative Code at 20.6.2.2002 NMAC.

The Bureau has three options in a CWA §401 Certification. If there is an existing state law or regulation (such as water quality standards) that requires more stringent limitations than the federal permit, the Bureau can write a condition for that requirement, and USACE must include the condition in the final permit. The Bureau generally certifies CWA §404 permits conditionally, meaning that we certify the permit if those conditions are followed. The second option is that the Bureau can comment on the draft permit based on best professional judgement and on-the-ground knowledge of the facility. USACE will consider but may not incorporate suggestions made in comments into the final permit. Thirdly, the Bureau can deny certification of the permit if it will not comply with the applicable sections of the Clean Water Act and appropriate requirements of state law. This would prohibit USACE from issuing the permit. The federal requirement for CWA §404 dredge and fill permits issued by USACE is at least a 15-day public review and comment period (33 CFR Parts 325.3 and 330.5), and the state requirement for CWA §401 Certification is at least a 30-day public comment period (20.6.2.2001 NMAC). The Bureau does not prepare a draft CWA §401 Certification for the public to review, but accepts comments for consideration in the certification during this public notice period. The Bureau cannot provide a draft document for public review due to stringent federal timelines for permit issuance. Federal regulations also require that the CWA §401 Certification is received by USACE within the Reasonable Period of Time determined by the USACE pursuant to 40 CFR Part 121. A final copy of

the CWA §401 Certification will be sent to USACE, the applicant and those who submitted comments for consideration in the CWA §401 Certification.

The public participation requirements of specific water quality programs are specified in 40 CFR Section 25.4 and described in New Mexico's Statewide Water Quality Management Plan and Continuing Planning Process (WQMP/CPP). At a minimum, the public participation process for New Mexico's water quality programs consists of the following:

- Providing the public with the information and assistance necessary for meaningful involvement;
- Providing a central location of reports, studies, plans, and other documents;
- Maintaining a list of affected or interested parties and stakeholders; and
- Notifying stakeholders in a timely fashion prior to consideration of major decisions (generally at least 30 days).

To fulfill this requirement, the Bureau invites the public to submit comments on the CWA §401 Certification for the Los Lunas Channel and Floodplain Maintenance Project to the Bureau for consideration and inclusion in the certification. Formal comments for inclusion in the public record must be submitted in writing via the NMED Public Comment Portal at: <https://nmed.commentinput.com/comment/search>.

IV. Location and Demographics

The Los Lunas Channel and Floodplain Maintenance Project is located approximately 2 miles above the NM6 bridge in Los Lunas, New Mexico at River Mile 163 at approximate latitude and longitude 34.822195°, -106.714166°.

Demographic Summary

Using U.S. Census Bureau 2015-2019 American Community Survey (ACS) Report a 4-mile buffer around the project area in Los Lunas, NM has an estimated population of **37,123**; **57%** identify as Hispanic or Latino (which may be of mixed race). The percent of persons that communicate in a language other than English (non-English) at home is **28%**, compared to **21.5%** for the United States. The per capita income for New Mexico is **\$27,945** (2016-2020 in 2020 dollars) as compared to the national per capita income of **\$35,384**, with **16.8%** of New Mexico's population living in poverty compared to the national poverty rate of **11.4%**. These results indicate that for the area, the percentage of Spanish-speaking communication is considerable (i.e., substantially greater than the state or national percentage) and there are demographic factors (i.e., low-income community, minority community, limited English proficiency individuals, Linguistically Isolated Households, etc.) that may impact public participation.

Therefore, the Bureau will provide information in Spanish and in English for public comment notices, public meeting notices, and other announcements (radio broadcasts, brochures, signs, postcards, etc.), and strive to make public participation efforts as inclusive as possible within Bureau budget and time limitations. Specific information repositories that may be used depending on the need are provided in Section V.H. of this PIP.

V. Public Participation & Outreach Activities

The public may ask questions about the CWA §401 Certification for the Los Lunas Channel and Floodplain Maintenance Project at any time. However, the Bureau emphasizes that to be included in the administrative record, comments solicited by public notices about the WQC must be submitted during the noticed comment period, and in accordance with the public notice.

Specific outreach activities related to the CWA §401 Certification for the Los Lunas Channel and Floodplain Maintenance Project include:

- Creating and maintaining a specific web page with attachments and links to all pertinent documents (see part II.B and II.C above),
- Developing a public notice announcing the opening of the 30-day public comment period on the WQC,
- Posting this notice to the SWQB website,
- Emailing this public notice to SWQB's extensive email list through the GovDelivery e-mail delivery service (1,796 email addresses as of July 14, 2020), and
- Sending this public notice to NMED's public relations officer for a press release
- Publishing the notice in at least one newspaper of general circulation

The most direct way to learn about and be involved in the decision-making process for this CWA §401 Certification is to submit a comment to the Bureau.

Based on the demographics report discussed in the PIP, basic information about public involvement opportunities will be in both English and Spanish. This information will include how to request materials in Spanish or to speak with Bureau staff through an interpreter. Further details about public participation for this activity are outlined below.

A. Postal Mailing or E-Mailing of Notices to Persons on the Surface Water Quality Bureau's Email List

The Bureau maintains an extensive email list (1,796 email addresses as of July 14, 2020) that includes individuals interested in surface water quality issues and activities. This list is a combination of all previously interested persons who requested the Bureau provide them with information about surface water quality in New Mexico. The Bureau regularly maintains contact information, which is updated or supplemented if additional information is found. Interested persons providing both an address and email may receive physical mail and an email. Additional individuals, organizations, and other interested parties are added to the email list as requested.

B. Email Updates

If you would like to be added to the Bureau's email list for information and updates, visit the Bureau's website at: <https://www.env.nm.gov/surface-water-quality/> and click on the "Click here to subscribe to receive email updates!" button on the bottom of the home page. For help, you can contact the Bureau's website liaison, Heidi Henderson at (505) 819-9986 or email

Heidi.Henderson@state.nm.us.

C. Notices in State Newspaper and Local Newspaper

The notice will be published in at least one newspaper of general circulation pursuant to 20.6.2.2002.D.1.b NMAC.

D. Public Meeting Notices, Public Comment Notices, and Other Notices

Based on the Bureau's evaluation of the community, notices will be translated into Spanish. In addition, the Bureau may post notices on the Department's Events Calendar at:

<https://www.env.nm.gov/events/>

E. Informational Pamphlets

The Bureau does not develop informational pamphlets for draft permits. Generally, information about how USACE's permit was developed or has changed is documented in the fact sheet or statement of basis accompanying the draft permit, which is located along with the draft permit itself on USACE's public notice website.

F. Public Comment Period

The 30-day public comment period on the CWA §401 Water Quality Certification for the Los Lunas Channel and Floodplain Maintenance Project is planned to start October 21, 2022, and end November 21, 2022, at 5:00 p.m. Since day 30 falls on Sunday November 20, 2022, the comment period will be extended one additional day.

G. Other Outreach

Due to the COVID-19 pandemic and health emergency, other means of outreach such as flyers or other hard copy postings will not be used. However, any updates will be posted on the Department's website.

H. Information Repositories

Copies of the dredge and fill permits of the above-mentioned supporting documents may be obtained via download from the USACE's website at <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/>, or NMED's website at <https://www.env.nm.gov/public-notices/>, or the Bureau's website at <https://www.env.nm.gov/surface-water-quality/public-notices/>, or by contacting Bureau contacts listed above in Section II.

Due to the COVID-19 pandemic and health emergency, the Bureau will not provide hardcopies and other information at post offices, community centers, public libraries, or other repositories. The Bureau requests that individual's access to Water Quality Certification documents and information online at the links noted above. If absolutely needed, the Bureau will work with individuals to provide safe access to hardcopies. If you would like to request hard copies of important documents or information about how to comment on the proposed NWP's, please contact Alan Klatt at (505) 819-9623 or email: alan.klatt@env.nm.gov. You may also contact

Abraham Franklin at (505) 946-8952 or email: abraham.franklin@env.nm.gov.

I. CWA §401 Certification Proceedings, Outcomes and Responses to Comments

To address stakeholder and community members comments, the Bureau will prepare a “Response to Comments” following the close of the public comment period. The final CWA §401 Certification and Response to Comments will be sent to the Corps, the permit applicant, and the interested stakeholders and/or community members who commented directly to the Bureau. Comments received will also be summarized in the CWA §401 Certification of the CWA §404 federal permit.