



NEW MEXICO ENVIRONMENT DEPARTMENT  
***Surface Water Quality Bureau***

Public Involvement Plan (PIP) for WQCC 24-65 (R) -  
Sandia Canyon Use Attainability Analysis (UAA)

**February 2025**  
**APPROVAL PAGE**

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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 a third-party rulemaking before the New Mexico Water Quality Control Commission (WQCC). Triad National Security, LLC, and the United States Department of Energy's National Nuclear Security Administration (collectively referred to as the Petitioners) conducted a Use Attainability Analysis (UAA) and propose to change the Aquatic Life Use (ALU) subcategory from coldwater to coolwater for a portion of the stream segment (WQCC 24-65, <https://www.env.nm.gov/opf/docketed-matters/>). Under New Mexico's *Standards for Interstate and Intrastate Surface Waters* (Surface Water Quality Standards or WQS), codified at 20.6.4 New Mexico Administrative Code (NMAC), "The commission may remove a designated use, that is not an existing use, specified in Section 101(a)(2) of the federal Clean Water Act or adopt subcategories of a use in Section 101(a)(2) of the federal Clean Water Act requiring less stringent criteria only if a use attainability analysis demonstrates that attaining the use is not feasible because of a factor listed in 40 CFR 131.10(g)..." and "Any person may submit notice to the department stating their intent to conduct a use attainability analysis..." The Petitioners have consulted with the Bureau and responded to comments on the UAA developed in support of the proposed amendment. It is important to note the proposed designated use change and site-specific criterion would only apply to the Upper Sandia Canyon stream segment and would not affect water quality standards for other surface waters of the state.

The Petitioners developed and followed a public participation process as outlined in Exhibit A of the Petition (WQCC 24-65). That process concluded with the Petitioners' filing a petition for rulemaking with the WQCC. The purpose of this PIP is to provide public participation opportunities and information that may be needed to engage in the rulemaking process with the WQCC, the Petitioners, or NMED for this action. The Bureau encourages early engagement to inform public comments and participation during the rulemaking process. As petitioners, it is expected that the Petitioners will work with the WQCC's administrator and the Bureau to ensure adequate resources and funding to provide public notice of rulemaking and access to information, meetings, or hearings as required by various statutes and regulations to fulfill the public participation requirements for WQCC rulemaking.

The proposed rule does not include any waters within tribal jurisdictions; however, the stream segments are proximate to tribal boundaries. The Petitioners have notified pueblos that have lands or connections to waters that could be affected by the proposed amendment. Likewise, the Petitioners should notify interested stakeholders that have provided them contact information as well as directly impacted stakeholders such as private landowners, and federal and state agencies whose lands, facilities, or operations could be impacted. Ultimately, the WQCC will need to adopt proposed regulatory language after conducting a public hearing for the proposed rule to take effect for state purposes. The adopted regulatory language is then sent to the EPA for approval for federal purposes.

This PIP integrates information about the community and identifies resources needed to successfully incorporate community participation. The PIP identifies the Petitioners and Department staff and resources needed to accomplish these activities.

In developing this PIP, 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.<sup>1</sup> 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 proposed

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<sup>1</sup> See Section IV. Location and Demographics – Demographic Summary.

amendment.

New Mexico's 2020 Statewide Water Quality Management Plan and Continuing Planning Process (WQMP/CPP, <https://www.env.nm.gov/surface-water-quality/wqmp-cpp/>) outlines public participation actions based on the Water Quality Act (WQA), State Rules Act, and NMAC requirements and include:

- Stakeholder identification and outreach to gather information and identify potential updates.
- Conduct public meetings.
- Minimum 30-day public comment period for draft proposal.
- Petition the WQCC at a public meeting to request a hearing for the proposed changes to the regulations.
- Publish hearing notice in the New Mexico Register, in one newspaper of statewide general circulation, in one newspaper in the affected area (as applicable) and mailed to the WQCC mailing list and email listserv 60 days prior to hearing date.
- Email hearing notice to Bureau mailing list.
- Post rulemaking information on Department website.
- Post rulemaking information on State's Sunshine Portal.
- Provide electronic mail notification of hearing notice with links to supporting documentation for proposed rulemaking to the Department's district and field offices .
- Send rulemaking information and notice of hearing by electronic mail (if provided) to persons who have identified as a stakeholder, participated in the rulemaking, or specifically made a request for notice.
- Send written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address.
- Provide notice of hearing to the New Mexico Legislative Council Services for distribution to appropriate legislative committees.
- Public hearing before WQCC.
- Publication of approved regulation in the New Mexico Register with effective date of rule.
- Post WQCC and EPA approved versions of 20.6.4 NMAC on the Bureau's website.

The proposed amendment may generate interest for a community of Spanish speakers, and the Petitioners should provide pertinent information in both English and Spanish in public meeting notices, public comment notices, and other announcements (radio broadcasts, brochures, signs, newspapers, 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.F. Per item #19 of the pre-hearing order, simultaneous Spanish-language interpretation will be provided at the hearing if timely requested. The Petitioner will bear financial responsibility for this service.

More detailed information about completed Petitioner activities can be found in their petition (WQCC 24-65) and Exhibit A of their demonstration available on the WQCC Docketed Matters website at: <https://www.env.nm.gov/opf/docketed-matters/>. Rulemaking activities for planned (Petitioner and WQCC) outreach and public involvement are available in Table 1.

This PIP is a "living" document that may be amended after considering public comments and feedback we receive on an activity. The Bureau Chief provides final approval of the PIP and amendments.

**Table 1. Schedule of Public Participation and Stakeholder Outreach Activities**

<b>Activity</b>	<b>Dates</b>
Prehearing Stakeholder Outreach and Engagement	December 2020 – June 2024
East Jemez Resources Council meeting	December 20, 2020
Accord Technical Exchange Meeting	February 23, 2021
Petitioner Public Comment Period	December 20, 2021- February 3, 2022
Consider and Respond to Comments, Regulation Amendments	February 4, 2022 – March 15, 2024
Final UAA Presentations at ATEM and EJRC	February 21, 2024, and May 7, 2024, Respectively
Petitioners Provide Notice of 30-day Public Comment	May 9, 2024
30-day Public Comment Period	May 13, 2024- June 12, 2024
Petition WQCC for Hearing	December 10, 2024
Pre-hearing Order Posted to WQCC Website	December 20, 2024
Public Notice of Rulemaking (i.e., 60 Days prior to hearing – 20.1.6 NMAC and State Rules Act “Provide to the Public”)	March 11, 2025
WQCC Public Comment Period (through the close of the record)	March 11, 2025 – May 13/14, 2025
File Notice of Intent – Technical Testimony	April 14, 2025
WQCC Hearing and Oral Public Comment	WQCC Hearing on May 13, 2025, Public Comment at 1:00 PM If necessary, Hearing Continues May 14, 2025
If adopted, post amended rule to NMED website and submit to SRCA for publishing and to EPA for approval	May - July 2025

## II. Department and Petitioner Contacts

Bureau contacts for questions regarding the Segment-Specific Temperature Criterion for a Portion of the Upper Sandia Canyon Stream Segment, the Bureau’s website, or this PIP, are listed below:

Michael Baca, WQS Coordinator  
 Surface Water Quality Bureau  
 1190 South St. Francis Dr.  
 Santa Fe, NM 87505  
 Phone: (505) 470-1652  
 Email: [michael.baca1@env.nm.gov](mailto:michael.baca1@env.nm.gov)

Lynette Guevara, MASS Program Manager  
 Surface Water Quality Bureau  
 1190 South St. Francis Dr.  
 Santa Fe, NM 87505  
 Phone: (505) 629-8811  
 Email: [lynette.guevara@env.nm.gov](mailto:lynette.guevara@env.nm.gov)

### A. Non-English Language Speaker Assistance and Accommodations

Non-English speakers may call the Petitioner contact listed in this PIP and request language assistance services, such as an interpreter, so they can learn more about the proposed amendment.

### B. Department Websites

The Department maintains websites and webpages for information regarding its activities, programs, boards, and commissions. Department websites include:

- New Mexico Environment Department - <https://www.env.nm.gov/>
- Surface Water Quality Bureau - <https://www.env.nm.gov/surface-water-quality/>
- Water Quality Control Commission - <https://www.env.nm.gov/opf/water-quality-control-commission/>
- WQCC Docketed Matters - <https://www.env.nm.gov/opf/docketed-matters/>

### III. Regulatory Framework

EPA's regulation at 40 CFR 131.10(g) provides that states and tribes "States may designate a use, or remove a use that is *not* an existing use, if the State conducts a use attainability analysis as specified in [paragraph \(i\)](#) of this section that demonstrates attaining the use is not feasible because of one of the six factors in this paragraph. If a State adopts a new or revised water quality standard based on a required use attainability analysis, the State shall also adopt the highest attainable use, as defined in [§ 131.3\(m\)](#).

- (1) Naturally occurring pollutant concentrations prevent the attainment of the use; or
- (2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
- (3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
- (4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or
- (5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
- (6) Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact."

40 CFR 131.3(g) defines a use attainability analysis as "a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in [§ 131.10\(g\)](#). New Mexico's WQS (20.6.4.15.A.1) states "The commission may remove a designated use, that is not an existing use, specified in Section 101(a)(2) of the federal Clean Water Act or adopt subcategories of a use in Section 101(a)(2) of the federal Clean Water Act requiring less stringent criteria only if a use attainability analysis demonstrates that attaining the use is not feasible because of a factor listed in 40 CFR 131.10(g). Uses in Section 101(a)(2) of the federal Clean Water Act, which refer to the protection and propagation of fish, shellfish and wildlife and recreation in and on the water, are also specified in Subsection B of 20.6.4.6 NMAC." NMAC 20.6.4.15.D.1 specifies "The process for developing a use attainability analysis and petitioning the commission for removing a designated use and establishing the highest attainable use shall be done in accordance with the State's current *Water Quality Management Plan/Continuing Planning Process*."

The Petitioners prepared a demonstration for the proposed amendment for the public to review and accepted comments for consideration during their public comment period. In conjunction with the WQCC's administrator, the Petitioners will publish a notice of the rulemaking for the public to review and the WQCC will accept comments. The public participation requirements of specific water quality programs are specified in 40 CFR Section 25.4 and described in New Mexico's 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).

## **IV. Location and Demographics**

The proposed amendment applies to waters located in Los Alamos County.

### **Demographic Summary**

Demographic indicators were obtained from EPA EJSCREEN, an environmental justice screening and mapping tool, available on-line at <https://www.epa.gov/ejscreen>. EJSCREEN is based on nationally consistent data and an approach that combines environmental and demographic indicators in maps and reports. Users choose the geographic area of interest by indicating a point, line or polygon on the map; users may also choose to select a “buffer” area (up to 10 miles) around the point, line or polygon to better capture the affected community. EJSCREEN then provides a report that describes demographic and environmental information for that area, with or without an assigned buffer. The 2018-2022 American Community Survey (ACS) Report link in EJSCREEN provides a report with U.S. Census Bureau American Community Survey (ACS) data in PDF format. The 2018-2022 ACS, through EJSCREEN, provided quantitative information regarding demographic indicators.

### **Summary of Site-Specific EJSCREEN Inputs**

- Community of Concern = Los Alamos, White Rock, and San Ildefonso Pueblo
- Buffer = 12-mile radius around Los Alamos, New Mexico

The buffer is wide enough to capture Los Alamos, White Rock, San Ildefonso Pueblo and communities surrounding the affected area. The area of interest has an estimated population of 20,300; 19% identify as Hispanic or Latino (which may be of mixed race), 76% identify as White, 5% identify as Asian, 4% identify as American Indian, 4% identify as Some Other Race, and 1% identify as Black. The percent of persons that communicate in a language other than English (non-English) at home is 17%, compared to 21.7% for the United States. The EJSCREEN analysis identified 250 of 8,518 (3%) linguistically isolated households. Approximately 29% of these households speak Spanish, 59% speak Asian-Pacific languages, 11% speak other Indo-European languages, and 1% speak other languages. The per capita income for the community of interest was not available from EJ Screen. However, the per capita income for Los Alamos County for 2018-2022 is \$71,527 and the per capita income for Santa Fe County is \$45,402. These are higher than the national per capita income during the same period of \$41,261.

These results indicate that for the area of interest, the percentage of Spanish-speaking and Asian-Pacific language communication is considerable however, the percentage of minority and low-income populations in this community are not expected to result in difficulties participating in the hearing. The facility’s history and various demographic factors (i.e. nearby American Indian Pueblos.) in a broader geographic area may impact public participation.

## **V. Public Participation & Outreach Activities**

The public may ask questions about the rulemaking, at any time. However, NMED emphasizes that to be included in the administrative record, comments solicited by public notices about the rulemaking must be submitted during the noticed public comment period, and in accordance with the public notice.

The Petitioners identified directly impacted stakeholders starting in 2020 and conducted outreach meetings from December 2020 to May 2024 to gather input and identify potential concerns and technical updates. The Petitioners developed a response to comments and incorporated feedback into their demonstration before petitioning the WQCC in December of 2024. Since a hearing was granted, The Petitioners will publish a notice of rulemaking in the New Mexico Register and newspapers to provide the public with rulemaking

information and participation instructions as outlined by the SRA and the commissions rulemaking procedures at 20.1.6 NMAC. The WQCC will update its website with the notice of the hearing, rulemaking information, and participation instructions. Hard copies of these materials will be available at NMED field offices as well. The Bureau will send this information via email to the bureau's listserv, the Sunshine Portal and the Legislative Services Committee. The WQCC will consider and include timely public comments (i.e., received within specified deadlines) as part of the hearing record. If the WQCC adopts the amendment, the Bureau will post the approved regulation on the Department website and publish notice of the effective date in the New Mexico Register.

Specific outreach activities related to the proposed amendment include:

- Developing and publishing notices of public hearing in the NM Register and newspapers of general circulation,
- Posting notices to the WQCC's website and the New Mexico Sunshine Portal,
- Emailing public notices to stakeholders including tribes, permittees, state and federal agencies, the Legislative Services Council, the Small Business Regulatory Advisory Council, and the Bureau's extensive listserv through the GovDelivery e-mail delivery service, and
- Receiving and considering public comment through the end of the hearing.

The most direct way to learn about and be involved in the decision-making process for this Plan revision is to submit a comment to the Commission during the public comment period and/or attending the rulemaking hearing when the Petitioners present the proposed rule to the WQCC for adoption.

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 Petitioner 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 (1,925 email addresses as of February 11, 2025) that includes individuals interested in surface water quality issues and activities. This list is a combination of previously interested persons who requested the Bureau provide them with information about surface water quality in New Mexico. The list is maintained through a professional email messaging platform with standard options for users to maintain, modify, or cancel subscriptions. The Bureau regularly maintains contact information, which is updated or supplemented if additional information is found. 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 "Subscribe to SWQB News" 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@env.nm.gov](mailto:Heidi.Henderson@env.nm.gov).

### **C. Public Notices – Comments, Meetings, Hearings, and Other Notices**

Based on the Bureau's evaluation of the community, public notices and listservs should be translated into Spanish. In addition, the Department will post English and Spanish notices, with participation details, access to supporting information, and communication instructions on its websites, as appropriate. Sections II.B lists website addresses where information and notices will be posted.

#### **D. Public Comment Period and Hearing.**

The Commission will hold a minimum of 60-day public notice and a minimum 30-day comment period on the proposed amendment. This public comment opportunity will start with publishing the notice of rulemaking in the New Mexico Register and will continue through the close of the administrative record. Interested parties may also provide technical testimony at the hearing by filing a Notice of Intent prior to the hearing. Details for participating in the hearing, submitting comments, providing technical testimony, and deadlines will be outlined in each public notice.

#### **E. Other Outreach**

Other means of outreach such as flyers, radio advertisements, or hard copy postings will not be used. However, any updates to the material or rulemaking process will be posted on the Department's website.

#### **F. Information Repositories**

Copies of the proposed amendment will be available to download from the Department websites listed above or by contacting NMED directly. If requested, the Bureau will work with individuals to provide hard copies. If you would like to request hard copies of important documents or information about how to comment on the rulemaking, please contact Michael Baca at (505) 470-1652 or [michael.baca1@env.nm.gov](mailto:michael.baca1@env.nm.gov).

#### **G. Response to Comments, Amendments, and Participating in the Rulemaking Hearing.**

To address stakeholder and community members input, the Petitioners considered and responded to all public comments received within the public comment period. The Petitioners prepared a "Response to Comments" document and included it as an exhibit to the WQCC petition for the proposed amendment. The final rule language and supporting information for the rulemaking will be presented to WQCC for approval and adoption into 20.6.4 NMAC by the Petitioners at a WQCC hearing scheduled to begin May 13, 2025, and continue as necessary. The commission is holding a public comment period in conjunction with this hearing and will consider all input received. Public comments received by the WQCC will be part of the administrative record. If approved by the WQCC, the Bureau will submit the adopted rule to EPA for approval.