



NEW MEXICO ENVIRONMENT DEPARTMENT
Surface Water Quality Bureau

Public Involvement Plan (PIP) for WQCC 25-28(R) –
Tijeras Arroyo Use Attainability Analysis (UAA)

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APPROVAL PAGE

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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). National Technology & Engineering Solutions of Sandia, LLC (NTESS), operator of Sandia National Laboratory under contract with Department of Energy (collectively referred to as “the Petitioners”) petitioned the New Mexico Water Quality Control Commission (WQCC) for a rulemaking to amend Water Quality Standards (20.6.4 NMAC). Specifically, the Petitioners conducted a Use Attainability Analysis (UAA) and propose to include “Tijeras Arroyo, Rio Grande to Four Hills Bridge” to the list of ephemeral waters under 20.6.4.97 NMAC. If approved, the less stringent limited aquatic life and secondary contact uses would be applicable designated uses.

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 segment is 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.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 proposed 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

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

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.

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. As typically noted in 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.

Details about completed Petitioner public participation activities can be found in their petition (WQCC 25-28) and Exhibit A, 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

Activity	Dates
Petitioner PIP posted to UNM digital repository	April 2024
Public notice	February 8, 2025
Public meeting	March 5, 2025
Petitioner 60-day Public Comment Period	February 8, 2025 – April 10, 2025
Petition WQCC for Hearing	July 8, 2025
Public Notice of Rulemaking (i.e., at least 60 Days prior to hearing)	August 12, 2025
Public Comments submitted to WQCC	TBD
WQCC Hearing - Oral and written Public Comment accepted	TBD
If adopted, submit revised 20.4.6 NMAC to EPA for approval	TBD

II. Department and Petitioner Contacts

Bureau contacts for questions regarding the Tijeras Arroyo Use Attainability Analysis, 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

Lynette Guevara, MASS Program Manager
 Surface Water Quality Bureau
 1190 South St. Francis Dr.
 Santa Fe, NM 87505
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 Email: 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 \(j\)](#) 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." 20.6.4.15.D.1 NMAC 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 Bernalillo County.

Demographic Summary

Demographic indicators were obtained from The Experience Builder Application, a demographic characteristics screening and mapping tool, available on-line. The Experience Builder uses ArcGIS online (AGOL) Living atlas layers and NMED data to assist with New Mexico with planning actions and assure no communities are missed in permitting and enforcement actions. The data provided is sourced from the 2019-2023 American Community Survey (ACS). These data identify a person's ability to speak English "very well" or "less than very well" and the language predominately spoken at home for those populations age 5 and older. The ACS tables, from The Experience Builder Application, provided quantitative information regarding demographic indicators.

Summary of geographic area for communities of concern

- The Tijeras Arroyo assessment unit (AU NM-9000.A_070) is located entirely within Bernalillo County. Data for the LEP analysis was obtained for Bernalillo County and Valencia County, which is within 10 miles of the assessment unit. Isleta Pueblo is less than 10 miles from the assessment unit and is located within both Bernalillo and Valencia counties, thus ACS data for Isleta Pueblo are included with county-level data.

The total population of the area of interest is 752,649 with 676,444 residents in Bernalillo County and 76,205 in Valencia County. In Bernalillo County, 48.7% identify as Hispanic or Latino (which may be of mixed race), 37.5% identify as White, 4.5% identify as American Indian, 3.7% identify as Some Other Race, 2.8% identify as Asian, 2.6% identify as Black, and 0.1% identify as Native Hawaiian. In Valencia County, 60.1% identify as Hispanic or Latino (which may be of mixed race), 32.3% identify as White, 3.1% identify as American Indian, 3.0% identify as Some Other Race, and 1.0% identify as Black, and 0.4% identify as Asian.

In Bernalillo County, 26.6% of the population age 5 and older speaks a language other than English at home, and of these individuals, approximately 46,279 (7.2%) speak English “less than very well.” Within Valencia County, 27.8% of the population age 5 and older speaks a language other than English at home, and of these individuals, approximately 4,559 (7.7%) speak English “less than very well.” By comparison, a greater percent of the total populations of New Mexico (8.7%) and the United States (8.4%) speak English “less than very well.” The percent of persons that communicate in a language other than English (non-English) at home is 26.6% in Bernalillo County and 27.8% in Valencia County, compared to 21.7% for the United States.

There were 10,196 of 283,609 (3.9%) linguistically isolated households in Bernalillo County and 1,093 of 26,782 (4.1%) linguistically isolated households in Valencia County compared to 5.2% of households in New Mexico and 4.2% of households nationwide. Among linguistically isolated households in Bernalillo County, 83.0% speak Spanish, 9.3% speak Asian-Pacific languages, 4.1% speak other Indo-European languages, and 3.7 % speak other languages. Among linguistically isolated households in Valencia County, 96.3% speak Spanish, 1.1% speak Asian-Pacific languages, and 2.6% speak other languages. The median per capita income in Bernalillo County for 2019–2023 was \$39,234 and the per capita income for Valencia County was \$30,066. Median incomes for both counties were lower than the national per capita median income of \$43,289 during the same period.

These results indicated that for the area of interest, a substantial percentage of the population speaks a language other than English, and a high proportion of households had lower per capita income than the national median. The percentage of linguistically isolated, minority, and low-income populations in this community may impact public participation in the hearing. Additionally, the facility’s history and broader regional demographics, including proximity of American Indian Pueblos, may influence overall public engagement.

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 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, publish notice of the effective date in the New Mexico Register and submit the revised version of 20.6.4 NMAC to EPA for review and approval.

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.

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 (1,924 email addresses as of August 4, 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.

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 and at local field offices, as appropriate. Sections II.B lists website addresses where information and notices will be posted.

D. Public Comment Period and Hearing.

The Petitioners identified directly affected stakeholders and conducted an outreach meeting in March 2025 to gather input and identify potential concerns and technical updates. The Petitioners issued a public notice on February 8, 2025 announcing a 60-day public comment period. No public comments were received during this public comment period, so Petitioners did not include response to comments in their demonstration before petitioning the WQCC in July 2025. Because 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 State Records Act 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. Another public comment opportunity direct to the WQCC will be available in conjunction with the rulemaking hearing. This public comment opportunity starts 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) 470-1620 or michael.baca1@env.nm.gov.

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

As noted above in Section D, no public comments were received during the petitioner's comment period, so the UAA was not revised and a Response to Comments was not prepared. 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 to be determined. 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.