



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

Public Involvement Plan (PIP)  
for the  
Clean Water Act §401 Certification of the  
federal draft NPDES permit for the  
NPDES Construction General Permit  
NMR100000

June 2021

**APPROVAL PAGE**

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Shelly Lemon  
Chief, Surface Water Quality Bureau

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Date

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(Acting) Program Manager, Surface Water Quality Bureau

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Date

Public Notice Date: June 2, 2021

**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 §401 Certification of the NPDES Construction General Permit No. NMR100000.

The Bureau encourages the public to learn about and get involved in regulatory decision-making opportunities for the NPDES process. 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 Certification process.

This PIP integrates information about communities in New Mexico and identifies resources needed by the Bureau to successfully incorporate community participation activities into the decision-making process for the 401 Certification. The PIP identifies the Department staff and resources needed to accomplish these activities.

The Bureau will meet the public participation requirements for the 401 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. These factors are presented in Section IV: Location and Demographics. This assessment identifies community outreach needs and provides for public access opportunities above and beyond statutorily mandated requirements and underscores the importance of adequate public access to information about the 401 Certification.

As much as possible, public participation and informational activities related to the 401 Certification will be held within the timelines outlined in the table below. This timeline is tentative and subject to change; activities subject to statutory or regulatory deadlines are noted.

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

| <b>Activity</b>   | <b>Dates</b>   |
|---|--|
| Notice PIP (invite public input)                                      | Wednesday, June 2, 2021                                    |
| EPA Public Notice for the NPDES Construction General Permit NMR100000 | Wednesday, May 12, 2021 through Monday, July 12, 2021      |
| Public Notice/Comment Period for the Department’s 401 Certification   | Wednesday, June 2, 2021, through to Thursday, July 1, 2021 |
| Bureau sends 401 Certification to EPA                                 | (Tentative) Monday, July 26, 2021                          |

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. Bureau Contacts**

If you have questions about the State of New Mexico 401 Certification Process, the Bureau’s website, or this PIP, please contact:

Susan A. Lucas Kamat  
(Acting) Program Manager  
New Mexico Environment Department  
Surface Water Quality Bureau  
1190 South St. Francis Dr.  
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Santa Fe, NM 87502  
  
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Fax: (505) 827-0160  
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Industrial and Stormwater Team Supervisor  
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The NMED SWQB offices are currently closed due to the COVID-19 public health emergency. If you need to contact the Bureau regarding the Construction General Permit or draft NPDES permit no. NMR100000, 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 State of New Mexico 401 Certification.

Based on a four-factor evaluation for limited English proficiency (LEP) accessibility and outreach (NMED Policy and Procedure 07-11), the Bureau determined that additional language assistance (interpretation or translation services) and outreach are needed for this activity, at this time. The Bureau has determined that there are adequate resources available within the Department to provide LEP services, if requested or determined necessary. Public participation activities that are provided by the Bureau for certification or denial of NPDES Permit No. NMR100000 in accordance with federal Clean Water Act Section 401 appear sufficient. If additional information or data are acquired that indicate translation or interpretation services are needed, the Bureau will implement expanded outreach activities described in this PIP.

#### **B. Department Websites**

New Mexico Environment Department - <https://www.env.nm.gov/>  
Surface Water Quality Bureau - <https://www.env.nm.gov/surface-water-quality/>  
Point Source Regulation - <https://www.env.nm.gov/surface-water-quality/point-source-regulation-section/>  
NMED SWQB Public Notices - <https://www.env.nm.gov/surface-water-quality/public-notices/>

#### **C. 401 Certification Website**

The Bureau maintains a website location for information on 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/surface-water-quality/public-notices/>.  
<https://www.env.nm.gov/surface-water-quality/npdes-permits-401-certification/>

### **III. Regulatory Framework**

The Environmental Protection Agency (EPA) retains permitting authority for the National Pollutant Discharge Elimination System (NPDES) Program in New Mexico, and as such, drafts permits for facilities that discharge pollutants into surface waters located in New Mexico. The New Mexico Environment Department's role in NPDES permitting is to ensure that federal permits comply with the requirements of state law, including New Mexico's antidegradation requirements. The Department's permit certification process is outlined in Section 401 of the Clean Water Act, and New Mexico's Administrative Code at 20.6.2.2001 NMAC.

The Bureau has three options in a 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 EPA must include the condition in the final permit. However, the Bureau cannot condition a permit to make it less stringent. 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. EPA 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 EPA from issuing the permit in the State of New Mexico.

The federal requirement for public notice of draft NPDES permits issued by EPA Region 6 is at least a 30-day public review and comment period (40 CFR Part 124.10(b)), and the state requirement for 401 Certification is at least a 30-day public comment period (20.6.2.2001 NMAC). Typically, this is accomplished via a joint notice issued by EPA, which is posted on EPA's public notice website, accompanying all of the draft permit documents. EPA posts draft permits for New Mexico facilities which are on public notice on their website: <https://www.epa.gov/publicnotices/notices-search/location/New%20Mexico>.

This EPA proposed permit has a 60-day public comment period in the federal docket at [www.regulations.gov](http://www.regulations.gov) for docket ID # EPA-HQ-OW-2021-0169. The state requirement for 401 Certification is at least a 30-day public comment period (20.6.2.2001 NMAC). NMED must also submit their comments to EPA Region 6 by this 60-day comment period; therefore, NMED is implementing a 30-day public comment period for consideration in the preparation of the 401 Certification. EPA has not notified NMED of the deadline to submit the 401 Certification at this time. EPA posts draft general permits which are on public notice on their website: <https://www.epa.gov/npdes/proposed-2022-construction-general-permit-cgp-and-related-documents>.

The Bureau does not prepare a draft 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. A final copy of the 401 Certification will be sent to EPA Region 6, and those who submitted comments for consideration in the 401 Certification.

Final NMED 401 Certification letters are posted on the Bureau's website: <https://www.env.nm.gov/surface-water-quality/npdes-permits-401-certification/>

Final permits (along with EPA's response to comments) are posted to the Bureau's website at: <https://www.env.nm.gov/surface-water-quality/npdes-permits/>

The public participation requirements of specific water quality programs are specified in 40 CFR Section 25.4 and described in the 2020 New Mexico's Statewide Water Quality Management Plan and Continuing Planning Process (WQMP/CPP) at <https://www.env.nm.gov/surface-water-quality/wqmp-cpp/>. At a minimum, the public participation process for New Mexico's water quality programs consists of the following when joint notice is impractical:

- Minimum 30-day public comment period;
- Publish notice in one newspaper of general circulation (in area of discharge if individual permit);
- Post notice on NMED website; and
- Email notice to applicant (except for general permits as is the case for this Construction General Permit), SWQB mailing list, and affected government agencies or interested parties.

The Bureau invites the public to submit comments on EPA's Proposed NPDES Construction General Permit No. NMR100000 directly to EPA via the docket at [www.regulations.gov](http://www.regulations.gov) within the 60-day comment period and/or to submit comments to the Bureau for consideration and inclusion in the 401 Certification within NMED's 30-day comment period. If you would like to comment directly to the Bureau, please send written comments to the Bureau contacts listed above in Section II.

#### **IV. Location and Demographics**

The NPDES Construction General Permit NMR100000 will be implemented statewide, and thus contains objectives and strategies for the entire state.

##### **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 2014-2018 ACS Report link in EJSCREEN provides a report with U.S. Census Bureau American Community Survey (ACS) data in PDF format. The 2014-2018 ACS, through EJSCREEN, provided quantitative information regarding demographic indicators.

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

- Community of Concern = State of New Mexico
- Buffer = none, state-wide evaluation conducted

The 2014-2018 ACS Report indicates that New Mexico has an estimated total population of 2,092,434, of which, 49% report to be Hispanic and 9% report American Indian. Thirty-Five (35) percent of the total population age 5 and above speak a language other than English at home. An estimated 175,526 individuals age 5 and above (9% of the overall population age 5 and above) speak English "less than very well" with 41,207 households being identified as linguistically isolated. Of the linguistically isolated households identified, 83% are Spanish speaking, 3% speak another Indo-European language, 4% speak an Asian-Pacific Island language, and 11% speak some other unidentified language(s).

The per capita income for New Mexico is \$26,085 as compared to the national per capita income of \$34,103 with 18.2% of New Mexico's population living in poverty (U.S. Quick Facts 2015-2019). These results indicate that for the State of New Mexico, 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.

It is important for the Bureau to incorporate the linguistic and communication needs of the State when conducting public outreach and participation activities for statewide documents. 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.) as needed, and strive to make public participation efforts as inclusive as possible within Bureau budget and time limitations. Specific repository addresses that may be used depending on the need, are provided in this PIP in Section V.H.

## V. Public Participation & Outreach Activities

The public may ask questions about NPDES permits at any time. Interested community members do not need to wait for a formal public comment period to contact the Bureau. However, the Bureau emphasizes that to be included in the administrative record, comments solicited by public notices about the draft permit must be submitted during the noticed comment periods, and in accordance with the public notice and 20.6.2.2001 NMAC.

Specific outreach activities related to this proposed permit renewal and the Bureau's 401 Certification process include:

- Creating and maintaining a specific public notice web page with attachments and links to EPA's draft permit documents (<https://www.env.nm.gov/surface-water-quality/public-notices/>) and EPA's final permit (see <https://www.env.nm.gov/surface-water-quality/npdes-permits/>),
- Creating and maintaining a specific archive webpage with the final 401 Certification letters sent to EPA Region 6 (<https://www.env.nm.gov/surface-water-quality/npdes-permits-401-certification/>),
- Developing a public notice announcing the opening of the 30-day (or more, if applicable) public comment period,
- Posting this notice to the Bureau's website, and
- Emailing this public notice to Bureau's email list through the GovDelivery e-mail delivery service (1,800 email addresses as of September 2020).

Copies of the draft permit and any supporting documents may be obtained via download from the EPA website during the comment period at <https://www.epa.gov/npdes/proposed-2022-construction-general-permit-cgp-and-related-documents> or by contacting Susan A. Lucas Kamat at (505) 946-8924, [susan.lucaskamat@state.nm.us](mailto:susan.lucaskamat@state.nm.us), NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87502-5469.

The most direct way to learn about and be involved in the decision-making process for draft NPDES permits is to comment on the federal permit directly to EPA. Relevant comments may also be submitted to the Bureau for the 401 Certification. As stated in Section III above, the Bureau can only mandate changes to the draft permit if based on state law; however, EPA does consider the Bureau's comments based on best professional judgement.

Based on the demographics report discussed above, basic information about public involvement opportunities will be in both English and Spanish. This information will include information on how to request assistance. 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 email list (1,800 email addresses as of September 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 "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@state.nm.us](mailto:heidi.henderson@state.nm.us).

### **C. Notices in the State Newspaper and Local Newspapers**

There is a state requirement for public notices related to NMED's 401 Certification to be published in state or local newspapers. This is usually accomplished by a joint notice with EPA's public notice. NMED publishes notice of draft general NPDES permits in a newspaper of general circulation. EPA publishes notice of draft general NPDES permits in the Federal Register. The following is a list of publications where NMED will publish a public notice:

*Albuquerque Journal*  
*Las Cruces Sun*

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

Based on the Bureau's evaluation of the community, notices will be in English and translated into Spanish. In addition, the Bureau may post notices on the Department's Events Calendar at: <https://www.env.nm.gov/events-calendar/>.

### **E. Informational Pamphlets**

The Bureau does not develop informational pamphlets for draft permits. Generally, information about how EPA'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 EPA's public notice website.

### **F. Public Comment Period**

The 60-day public comment period to EPA on the draft NPDES Construction General Permit NMR100000 opened Wednesday, May 12, 2021, and closes on July 12, 2021. The 30-day comment period to the Bureau for consideration in the Clean Water Act Section 401 Certification of the draft NPDES Construction General Permit NMR100000 opens on Wednesday, June 2, 2021, and closes on Thursday, July 1, 2021.

### **G. Other Outreach**

Other means of outreach such as flyers announcing public comment periods and meetings may be posted on the Department's website, at the Bureau's discretion after consideration of public interest and input. Due to the COVID-19 pandemic and health emergency, the Bureau will not post other outreach throughout the community (e.g., local businesses, schools, public libraries, etc.) at this time.

### **H. Information Repositories**

Copies of EPA's draft 2022 Construction General Permit and any of the above-mentioned supporting documents may be obtained via download from the EPA Region 6 website at <https://www.regulations.gov/document/EPA-HQ-OW-2021-0169-0001>, <https://www.epa.gov/npdes/proposed-2022-construction-general-permit-cgp-and-related-documents> or by contacting Susan A. Lucas Kamat at (505) 946-8924, [susan.lucaskamat@state.nm.us](mailto:susan.lucaskamat@state.nm.us), NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87502-5469.

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. If you would like to request hard copies of important documents and information about how to comment on the draft permit, please contact contacting Susan A. Lucas Kamat at (505) 946-8924, [susan.lucaskamat@state.nm.us](mailto:susan.lucaskamat@state.nm.us), NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87502-5469.

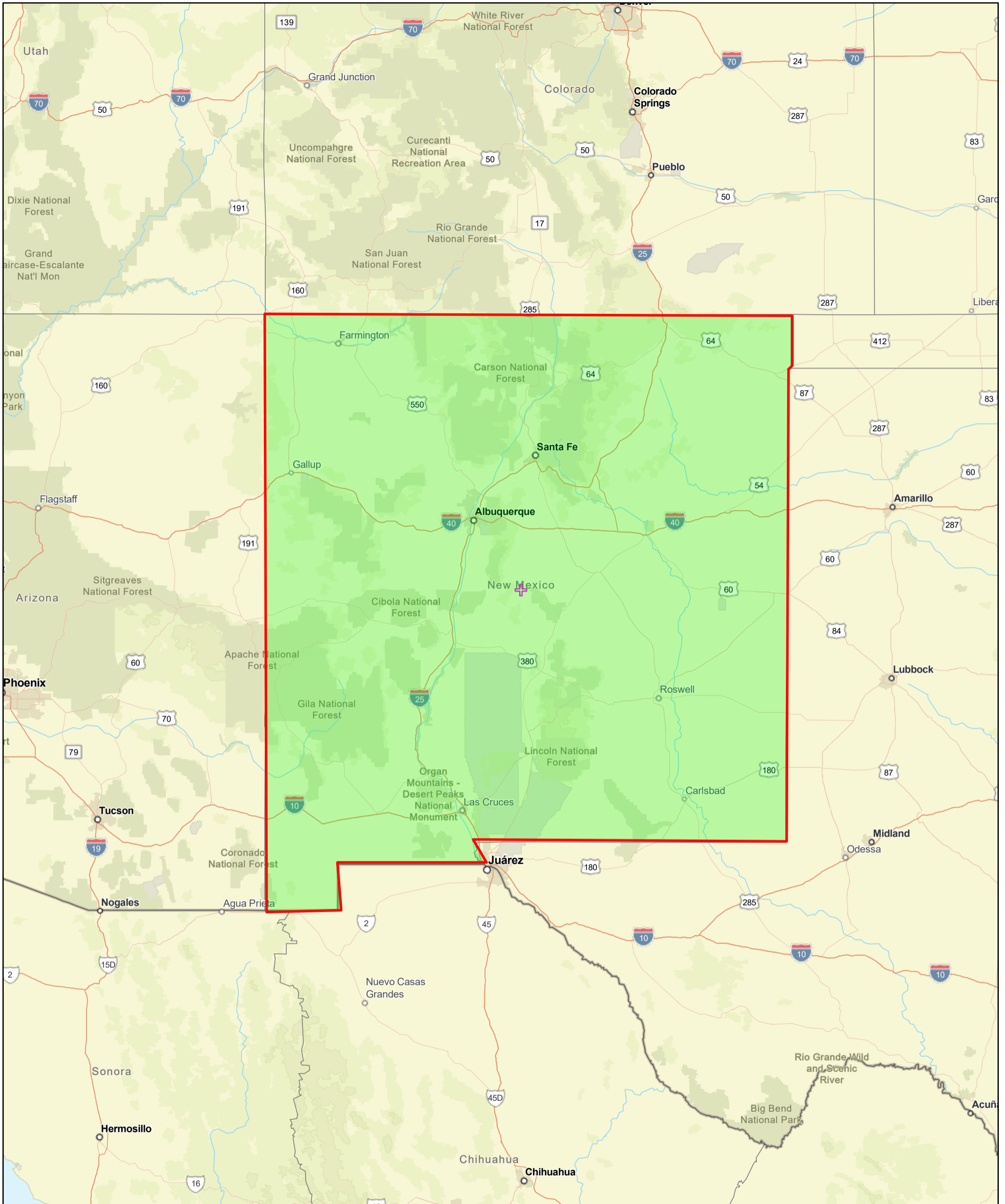
### **I. Comments and 401 Certification Proceedings, Outcomes and Responses to Comments**

The Bureau will email the Department's comments on EPA's draft Construction General Permit to the Bureau's listserv when finalized and submitted to EPA via the docket. The Bureau will prepare a "Response to Comments" following the close of the Bureau's 401 public comment period to address any stakeholder



and community members comments received. The final 401 Certification and Response to Comments will be sent to EPA Region 6 and the interested stakeholder and/or community members who commented directly to the Bureau. The Bureau will email the final 401 Certification to the Bureau's listserv once it is finalized and submitted to EPA. The final 401 Certification also will be posted to the Bureau's website and available to the public via download at: <https://www.env.nm.gov/surface-water-quality/npdes-permits-401-certification/>.



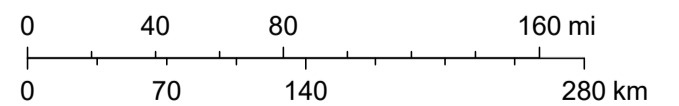
# New Mexico



6/1/2021

-  Project 1
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