



NEW MEXICO ENVIRONMENT DEPARTMENT
Surface Water Quality Bureau

Public Involvement Plan (PIP)
for the
Clean Water Act Section 401 Certification of the
U.S. Army Corps of Engineers
Individual Permit for the Lisboa Diversion Dam
Replacement Under Section 404 of the Clean
Water Act
SPA-2019-00191-ABQ

APPROVAL PAGE

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Date

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Date

Public Notice Date: September 5, 2019

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 Clean Water Act Section 401 Certification of the U.S. Army Corps of Engineers (Corps) draft Individual Permit for dredge and fill activities under Section 404 of the Clean Water Act for the Lisboa Diversion Dam Replacement Pecos River, SPA-2019-00191-ABQ.

The project will consist of replacing the existing diversion dam located on the Pecos River, which supplies water to the Lisboa Springs State Fish Hatchery, with a new structure approximately (110ft x 58ft), installing a fish ladder and the placing large boulders and rip rap to control erosion and stabilize banks.

Activities to be covered by the project include:

- Construct and maintain a temporary water diversion dam to bypass river flows around the work area. Diversion dam will use approximately 200 cubic yards (CY) of river gravel fill and 36 large rocks. The footprint of the temporary diversion dam will be approximately 1400 sq. ft. The water diversion will utilize an existing relic overflow channel of the river to convey water around the work area.
- Install a temporary earth berm below the downstream end of the temporary diversion channel to block water from entering the work area. The berm will be approximately 400sq. ft. and made of 50 CY of river gravel.
- Temporarily dewater around dam replacement area. Remove and dispose of existing concrete diversion structure.
- Reshape the river channel and construct the ramp, fish passage, main pool, and overflow weir. Import approximately 100 CY of rounded river rock and 200 CY of angular crushed rock to construct the subgrade for the new boulder & grout diversion structure.
- Install large boulders (approximately 200 boulders) for ramp, sills, weirs, deflectors, walls, and channel sides. Concrete grout will be used between boulders to reinforce the structure. Install approximately 180 CY of riprap rock for erosion control purposes. In total, the new diversion dam will have a footprint of approximately 6400 sq. ft. within OHWM. There will be an additional 2400 sq. ft. of temporary disturbance within OHWM during construction.
- Construct fish passage channel using boulders and concrete grout (approximately 32 cubic yards of grout and approximately 50 boulders). The fish passage channel will be integrated into the side of the boulder & grout ramp and is accounted for in the footprint quantities cited above.
- Remove approximately 900sq. ft. of soil fill on river-left upstream of the diversion dam to allow for flood water to spill out of the river and access the floodplain. Construct a permanent weir approximately 50sq. ft. at the entrance to this overflow channel with approximately 35 large rocks, 50 cubic yards of river gravel fill, and 15 cubic yards of rip rap.
- Remove the temporary water diversion dam to an off-channel site.
- Restore all disturbed areas.

The applicant is:

Samantha Ferguson
New Mexico Department of Game and Fish
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Santa Fe, NM 87504

The Bureau encourages the public to learn about and get involved in regulatory decision-making opportunities for dredge and fill activities. 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. A state Water Quality Certification ensures that the action is consistent with state law and complies with state Water Quality Standards, the Water Quality Management Plan/Continuing Planning Process (WQMP/CPP), including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy.

This PIP integrates information about the community 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, 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 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.

Activity	Dates
Notice PIP (invite public input)	
Public Notice/Comment Period for the Department’s 401 Certification	30 days
Public announcements (radio, brochures, signs, postcards, factsheets, etc.)	As needed
Bureau sends 401 Certification to the Corps	60 days

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.

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

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:

Abraham Franklin, Program Manager
Surface Water Quality Bureau
1190 St. Francis Dr.
Santa Fe, NM 87505

Phone: (505) 827-2793
Fax: (505) 827-0160
Email: abraham.franklin@state.nm.us

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1190 St. Francis Dr.
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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.

- The Bureau will send a notice in English and Spanish to the Bureau's listserve announcing the availability of the comment period for consideration in the state's Section 401 Certification.
- The Bureau will work with the Corps Albuquerque District to publish the joint public notice of the draft permit's comment period and the state's §401 Certification in both English and Spanish.
- Notices and outreach materials will be in English and Spanish and will include information on how non-English speaking persons or persons with disabilities can obtain assistance.
- If non-English speaking individuals contact the Bureau, bureau staff will work with the Department's interpreter to provide language assistance, either through immediately available staff, or through contracted translation services.
- If individuals with accessibility needs contact the Bureau, bureau staff will work with the Department's Office of General Counsel to address the request.
- If a non-English speaking individual provides written comment during the public comment period for consideration in the permit certification, the Bureau will communicate the Certification action to the individual in their preferred language.

B. The Document the Bureau is Reviewing and May Certify

Additional information regarding the Lisboa Diversion Dam Replacement project will be available on the Bureau's website - <https://www.env.nm.gov/surface-water-quality/public-notices/>. The link to the Public Notice on the Corps webpage is: <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/>

C. Department Websites

New Mexico Environment Department - <https://www.env.nm.gov/>
Surface Water Quality Bureau - <https://www.env.nm.gov/surface-water-quality/>
Watershed Protection Section - <https://www.env.nm.gov/surface-water-quality/watershed-protection-section/>

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

III. Regulatory Framework

The Corps administers a regulatory program to implement Section 10 of the Rivers and Harbors Appropriation Act and Section 404 of the Clean Water Act. The Corps 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 Section 401, the Clean Water Act provides States or Tribes the opportunity to certify 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 Corps will use (e.g., nationwide, general, individual, etc.).

The Bureau’s Clean Water Act Section 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 Section 401 of the Clean Water Act, and New Mexico’s Administrative Code at 20.6.2.2002 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 or action, the Bureau can write a condition for that requirement, and the Corps must include the condition in the final permit. The Bureau generally certifies 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. The Corps 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 the Corps from issuing the permit.

The federal requirement for 404 dredge and fill permits issued by the Corps is at least a 15-day public review and comment period (33 CFR Parts 325.3 and 330.5), and the state requirement for 401 Certification is at least a 30-day public comment period (20.6.2.2002 NMAC). Typically, this is accomplished via a joint public notice issued at the federal level, which is posted on the Corps public notice website, accompanying all of the draft permit documents:

<https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Public-Notices/Year/2019/>

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. Federal regulations also require that the 401 Certification is received by the Corps within 60 days after the draft permit is mailed (40 CFR Part 124.53(c)(3)). A final copy of the 401 Certification will be sent to the Corps, the applicant and those who submitted comments for consideration in the 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 Lisboa Dam Diversion project, Corps Project Number, SPA-2019-00191-ABQ, to the Bureau for consideration and inclusion in the 401 Certification. 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 project is located on the Pecos River, north of Pecos, NM and just north of the Lisboa Fish Hatchery on the left side of NM-63. Access is through a private gate.

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 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 2012-2016 ACS Report available through EJSCREEN provided quantitative information regarding demographic indicators.

Summary of Site-Specific EJSCREEN Inputs for the Lisboa Diversion Dam Replacement project:

- Community of Concern = Residents in the proximity of the proposed project area along the Pecos River and in Pecos, NM.
- Buffer = 4-mile buffer around the project site at Latitude 35.618185°, Longitude -105.684386°.

The 2012-2016 ACS Report indicates that the total population of the area-of-interest is 3,268. The total number of households is 1,266. The per capita income is \$21,183 which is 68% of the U.S. per capita income of \$31,177 (Source: U.S. Census, 2013-2017, Per capita income in past 12 months, April 2018 to April 2019, in 2017 dollars, <https://www.census.gov/quickfacts/fact/table/US/SEX255217>).

The percent minority population and percent of population by race is 83% minority; 39% of the community identifies as white and 56% identify exclusively as some other race. The percent of persons that communicate in a language other than English (non-English) at home is 59% (1,835 individuals), with 21% (661 individuals) speaking English “less than very well.” From the Bureau’s EJScreen analysis, there are 187 Linguistically Isolated Households in this community (168 or 90% of which speak Spanish). These results indicate that the percentage of non-English-speaking communication in this community is significant and various demographic factors (i.e. low-income community, minority community, limited English proficiency individuals, Linguistically Isolated Households, etc.) will likely impact public participation.

It is important for the Bureau to incorporate the linguistic and communication needs of New Mexico communities when conducting public outreach and participation activities. To help accomplish this, for this activity, 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.

V. Public Participation & Outreach Activities

The public may ask questions about dredge and fill (“404”) 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.

Specific outreach activities related to this draft permit for the Lisboa Diversion Dam Replacement project and the Bureau’s 401 Certification process include:

- 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 the Bureau’s extensive email list through the GovDelivery e-mail delivery service (1,684 email addresses as of August 26, 2019).

The most direct way to learn about and be involved in the decision-making process for this 401 Certification is to submit a comment to the Bureau. As stated in Section III above, the Bureau can only mandate changes to the Lisboa Diversion Dam Replacement project if based on state law; however, the Corps does consider the Bureau’s comments based on best professional judgement. Additionally, the public may request to review documents at the Bureau or one of the information repositories listed below.

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 (1,684 email addresses as of August 26, 2019) 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 505-827-2901 or email heidi.henderson@state.nm.us.

C. Notices in State Newspaper and Local Newspaper

There is a federal and state requirement for public notices related to NMED’s 401 Certification to be published in state or local newspapers. This is typically accomplished by a joint public notice with the Corps.

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 and English. 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 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 30-day comment period to the Bureau for consideration in the Clean Water Act Section 401 Certification of the Individual Permit for the Lisboa Diversion Dam Replacement project is planned to start on September 5, 2019-October 5, 2019 at 5:00 p.m.

G. Other Outreach

Other means of outreach such as flyers announcing public comment periods and meetings may be posted in locations throughout the community (e.g., local businesses, schools, libraries) and on the Department's website, at the Bureau's discretion after consideration of public interest and input.

H. Information Repositories

Information on the Lisboa Diversion Dam Replacement project and any of the above-mentioned supporting documents may be obtained via download from the Bureau's website at <https://www.env.nm.gov/surface-water-quality/public-notices/> or by contacting Abe Franklin at (505) 827-2793, abraham.franklin@state.nm.us, NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87502.

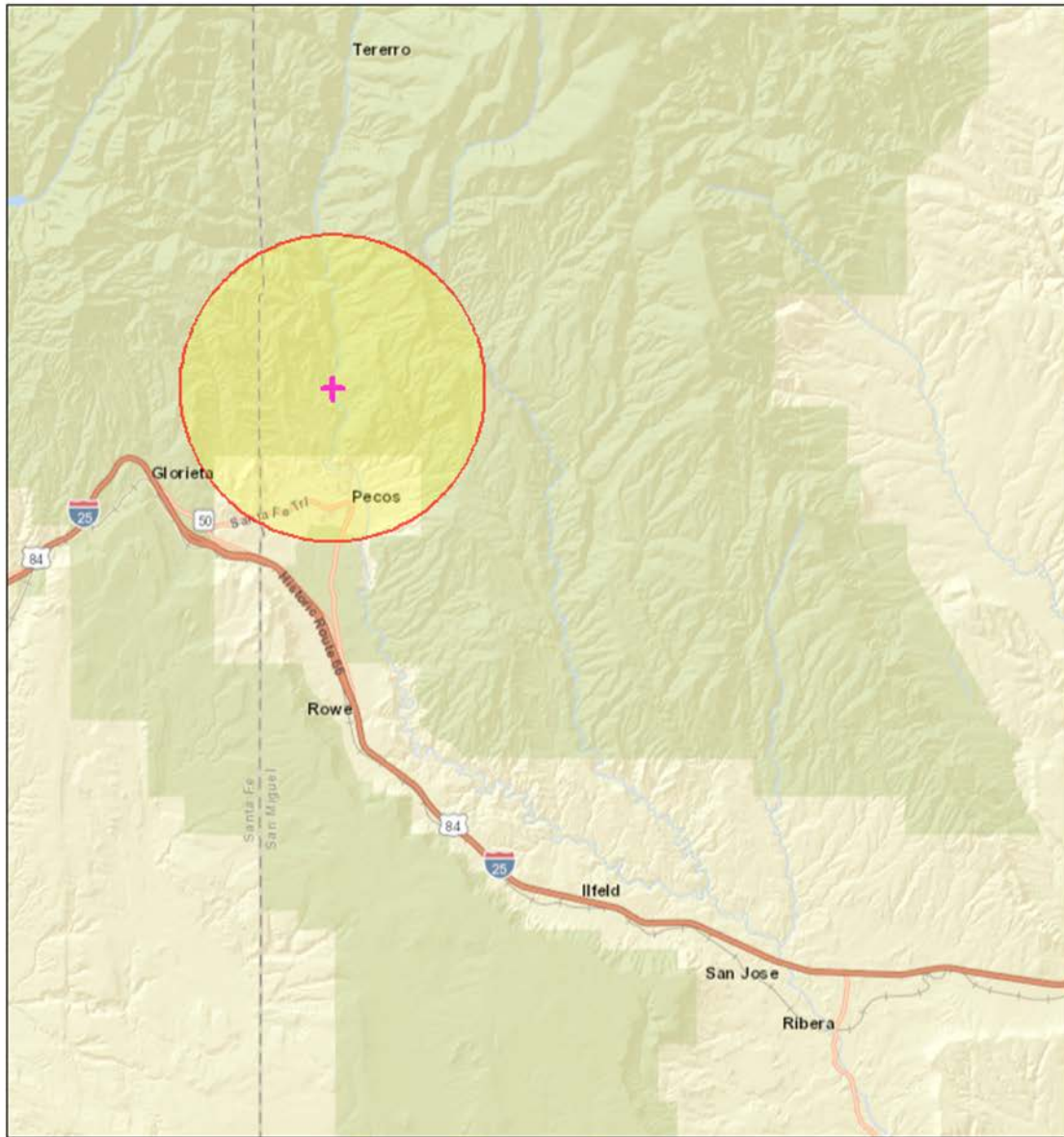
Post offices, community centers and public libraries, at the Bureau's discretion after consideration of public interest and input, may serve as access areas for the Bureau to leave hard copies of important documents and information about how to comment on the permit. The following is a list of locations where hard copies of relevant documents will be available to the community:

None identified at this time.

I. 401 Certification Proceedings, Outcomes and Responses to Comments

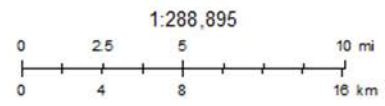
To address stakeholder and community members comments, the Bureau will prepare a "Response to Comments" following the close of the public comment period. The final 401 Certification and Response to Comments will be sent to the Corps, the permit applicant and the interested stakeholder and/or community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

Lisboa Diversion Dam



August 22, 2019

-  Buffer Area
-  Digitized Point



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

EJSCREEN 2018