



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  
Nationwide Permit 14-Linear Transportation  
and North Ponil Road Crossing Hardening  
Under Section 404 of the Clean Water Act

**APPROVAL PAGE**

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Shelly Lemon  
Chief, Surface Water Quality Bureau

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Date

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Abraham Franklin  
Program Manager, Surface Water Quality Bureau

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Date

Public Notice Date: June 10, 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) Nationwide Permit (NWP) 14-Linear Transportation under Section 404 of the Clean Water Act for the North Ponil Road Crossing Hardening located within the Valle Vidal Unit of the Carson National Forest, a state designated Outstanding National Resource Water (ONRW).

For proposed activities in Outstanding National Resource Waters (ONRW, 20.6.4.9 New Mexico Administrative Code) the Department denies Certification of all NWPs except NWP-27. The certification process for activities covered by nationwide permits other than NWP-27 will be conducted pursuant to 20.6.2.2002 NMAC (Clean Water Act Section 401 Water Quality Certification of Nationwide Permits for the State of New Mexico).

Activities to be covered by the NWP 14 include placing approximately 3-5 cubic yards of clean cobble within 3 feet of the North Ponil stream bank edge with additional road base material (approximately 15 cubic yards) placed on top of the cobble that will extend away from the stream. The purpose of this project is to reduce the impacts of heavy equipment passage on the stream channel, such that may occur from Forest Fire Engines, and to reduce suspended sediment from entering the stream. The applicant is:

Jack Lewis, District Forest Ranger  
Questa Ranger District, Carson National Forest, USDA Forest Service  
PO Box 110  
Questa, NM 87556

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.<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 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>
<b>Notice PIP (invite public input)</b>	June 10, 2019
<b>Public Notice/Comment Period for the Department’s 401 Certification</b>	30 days
<b>Public announcements (radio, brochures, signs, postcards, factsheets, etc.)</b>	As needed
<b>Bureau sends 401 Certification to the Corps</b>	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.

## **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

Alan Klatt  
 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](mailto:abraham.franklin@state.nm.us)

Phone: (505) 827-0388  
 Fax: (505) 827-0160  
 Email: [alan.klatt@state.nm.us](mailto:alan.klatt@state.nm.us)

### **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.

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

- The Bureau will publish a notice in at least one newspaper of general circulation pursuant to 20.6.2.2002 D.(1)(b) NMAC. A legal notice will be published in the Albuquerque Journal-North on Sunday June 9, 2019.
- The Bureau will send a notice in English and Spanish to the Bureau's listserv announcing the availability of the comment period for consideration in the state's Section 401 Certification.
- Notices and outreach materials will be in English and Spanish and will include information on 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 NWP 14 and the North Ponil Road Crossing Hardening project will be available on the Bureau's website - <https://www.env.nm.gov/surface-water-quality/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/>. However, the Corps is not required to provide a public notice for individual projects authorized by a NWP, so this will *not* be a joint public notice which means 20.6.2.2002 (D) NMAC applies and not 20.6.2.2002 (C) NMAC.

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 Nationwide Permit 14 for the North Ponil Road Crossing Hardening project 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 North Ponil crossing is located on Forest Road 1920 within in the Valle Vidal Unit, Questa Ranger District, Carson National Forest north of Cimarron, New Mexico off of Forest Road 1950 and U.S. Route 64.

### **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 NWP 14 North Ponil Road Crossing Hardening**

- Community of Concern = Residents in the proximity of the proposed project area which is located within the Valle Vidal Unit (an Outstanding National Resource Water) of the Questa Ranger District of the Carson National Forest.
- Buffer = 16-mile buffer around Forest Road 1920 and the North Ponil Road Crossing Latitude 36.764028°, Longitude -105.08180°. Input areas of 15 miles and less were “too sparsely populated for output” according to the EJSCREEN Report.

The 2012-2016 ACS Report indicates that the total population of the area-of-interest is 1,150. The total number of households is 603. The per capita income is \$22,533 which is 72% of the 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 45% minority; 85% of the community identifies as white and 9% identify exclusively as some other race. The percent of persons that communicate in a language other than English (non-English) at home is 25% (275 individuals), with 5% (56 individuals) speaking English “less than very well”. From the Bureau’s EJScreen analysis, there are 25 Linguistically Isolated Households in this community (21 or 87% 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, or in this instance the NWP 14 for the North Ponil Road Crossing Hardening project, must be submitted during the noticed comment periods, and in accordance with the public notice.

Specific outreach activities related to this NWP 14 for the North Ponil Road Crossing Hardening 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 (1,649 email addresses as of September 10, 2018).

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 use of NWP 14 for the North Ponil Road Crossing Hardening 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 (1,649 email addresses as of September 10, 2018) 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](mailto: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 notice with USACE's public notice; however, since USACE does not provide public notices for individual projects covered by NWP, NMED will provide a public notice pursuant to 20.6.2.2002 D. NMAC.

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

Based on the Bureau's evaluation of the community, notices will be translated into Spanish 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 NWP 14 for the North Ponil Road Crossing Hardening project is planned to start on June 10, 2019, and end on July 10, 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**

Copies of the NWP 14 for the North Ponil Road Crossing Hardening 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](mailto:abraham.franklin@state.nm.us), NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico, 87502.



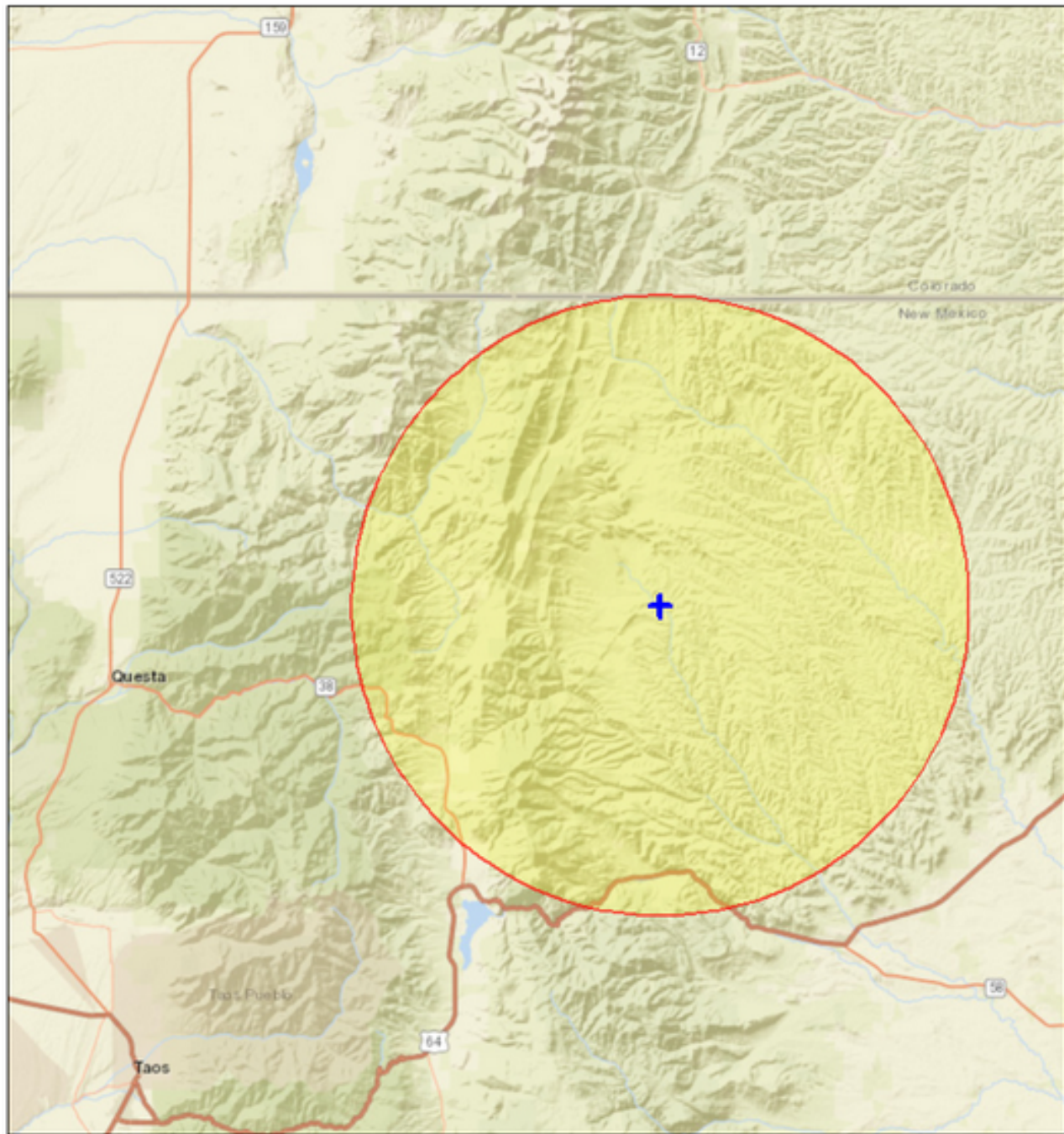
Post offices, community centers and public libraries, at the Bureau's discretion after consideration of public interest and input, may serve as access areas for the Bureau to leave hard copies of important documents and information about how to comment on the permit. The following is a list of locations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

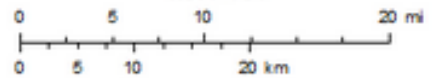
# NWP14 & FR1920



May 14, 2019

-  Buffer Area
-  Digitized Point

1:577,791



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