Dear Public Commenter:

We appreciate and value your comments and thank you for engaging in this process. NMED is committed to transparency and accountability in the cleanup of the San Juan Generating Station. As part of our commitment to transparency, a progress report will be shared with the New Mexico State Legislature by July 1, 2025, as required by HB-142. Public updates will continue, and information on the study's progress will remain available for review at: https://www.env.nm.gov/gwqb/gwqb-sites-of-interest/. The recording of the February 12th meeting held in Waterflow, NM, and all related materials can be found there.

NMED is working to identify and remediate contamination that occurred outside of permitted activities through NMED's authority granted under state law and HB-142. This includes assessing contamination in groundwater, soil, and other potential pathways that may have been impacted over time. The remediation and restoration study under HB-142 provides an independent assessment to ensure contamination is fully understood and addressed appropriately. NMED is also determining the extent of contamination in groundwater and soil to assess whether pollution is ongoing and to implement mitigation measures if needed. Additionally, impoundments and associated infrastructure are a key focus on the site, given their potential role as contamination sources.

In addition, NMED has compiled responses to your questions and comments, as well as other frequently asked questions:

1) What regulatory authority does NMED have over the site?

NMED has authority under the Water Quality Act [NMSA 1978, Sections 74-6-1 to -17], the Ground and Surface Water Protection Regulations [20.6.2 NMAC], and HB-142 [passed in 2023] to enforce contamination cleanup at the site. If groundwater pollution exceeds state standards, PNM is legally required to remediate the site. HB-142 strengthens NMED's ability to enforce penalties, mandate remediation, and ensure long-term monitoring. Currently, NMED is the only regulatory agency with authority to enforce contamination cleanup at the site.

<u>Regulatory Authority Over Permitting</u>
NMED regulates groundwater discharge permitting under 20.6.2 NMAC (Ground and Surface Water Protection Regulations). This includes:

- **20.6.2.3104 NMAC – Requires entities to obtain a discharge permit if their activities may introduce contaminants into groundwater.**
- **20.6.2.3109 NMAC – Governs modifications, renewals, and enforcement of discharge permits.**
- **20.6.2.3114 NMAC – Establishes closure criteria, requiring permittees to demonstrate that all applicable groundwater standards are met before a discharge permit can be terminated.**

- **PNM's discharge permits, including DP-1843 for the Shumway Arroyo Recovery Trench and DP-1327 for the Memorial Recovery Trench, are regulated under these provisions. PNM remains responsible for cleanup under these permits until all water quality standards are met.**

<u>Regulatory Authority Over Abatement (Remediation)</u>
NMED enforces groundwater abatement and remediation under 20.6.2.4100–4115 NMAC (Abatement Plans), which apply when a facility causes contamination exceeding state groundwater quality standards. Key provisions include:

- **20.6.2.4103 NMAC – Requires responsible parties to investigate and clean up contamination.**
- **20.6.2.4106 NMAC – Specifies that abatement plans must restore water quality to meet the groundwater standards in 20.6.2.3103 NMAC, which include limits on total dissolved solids (1,000 mg/L), toxic metals, and other contaminants.**
- **20.6.2.4112 NMAC – Requires long-term monitoring to confirm remediation effectiveness before site closure is approved.**

<u>Enforcement and HB-142</u>
In addition to the regulatory authority under the Water Quality Act and the Ground and Surface Water Protection Regulations, HB-142 strengthens NMED's ability to oversee and enforce remediation by requiring a remediation and restoration study that assesses contamination and informs full cleanup planning. HB-142 does not replace NMED's regulatory authority but provides additional tools to ensure contamination is fully addressed.

2) Can NMED require clean up and remediation action there?

   Yes, under state law PNM is legally obligated to clean up contamination at the site.

3) Does NMED have site access to gather information for assessment?

   Yes, NMED has access to the site for inspections, sampling and enforcement actions.

4) What is the status of decommissioning process?

   Demolition is ongoing, and NMED continues to enforce contamination remediation efforts while ensuring that demolition activities do not contribute to groundwater contamination.

5) Will decommissioning actions taken now impact future cleanup?

   NMED is monitoring site activities to prevent interference with necessary remediation efforts.

6) What assets will remain at the site that might be used for future economic development and/or community use?

   To NMED's knowledge, there are currently no plans for the future use of the site beyond remediation following the demolition of the generating station. Any future site use would require evaluation in accordance with environmental cleanup requirements.

7) Will there be long-term remediation requirements at the site?

   Yes, ongoing monitoring and cleanup will be required.

8) Why are the New Mexico taxpayers funding HB142 instead of PNM?

   HB-142 was funded by the New Mexico Legislature to ensure an independent study of contamination at the San Juan Generating Station and mine. This allows the state to verify findings, assess remediation needs, and ensure compliance with environmental laws without relying solely on data from PNM. However, PNM remains responsible for cleanup under its discharge permits and must fund and implement remediation until all required water quality standards are met. The HB-142 study does not replace PNM's obligations but rather strengthens oversight to hold PNM accountable.

9) Will NMED or PNM be drilling any new monitoring wells? Who will pay for new monitoring wells?

   NMED has determined that additional data collection, including new monitoring wells, is necessary to fully understand contamination sources and pathways. The decision to conduct additional drilling was based on findings from our ongoing investigation and the need to ensure a comprehensive and science-driven remediation strategy.

   NMED is currently delineating which monitoring wells will be supported by already appropriated funds from HB-142 to ensure compliance with study requirements, as well as which wells are the responsibility of PNM under its discharge permits. The remediation plan is being developed using information from both efforts to ensure a comprehensive approach.

   PNM is required to install and maintain wells under its discharge permits, and NMED is also using HB-142 funding to support necessary independent monitoring to fulfill the study's requirements. These efforts are complementary to ensure a full understanding of site conditions and to guide remediation planning.

   How HB-142 funding is allocated—including support for personnel, community development, and technical work—was determined by the Legislature. NMED is working within the funds already appropriated and is not exceeding that budget.

10) What is the relation between the two discharge permits for the Memorial Recovery Trench (DP1327) and the Consent Decree Recovery Trench (DP-1843) and HB142?

PNM is legally required to meet all applicable groundwater standards before site closure can be considered. NMED continues to hold PNM accountable under both discharge permits to ensure all contamination is properly addressed before a site can be closed. The permitting and any required abatement required by the Ground and Surface Water Protection Regulations, as well as the independent remediation requirements from HB-142, will ensure that groundwater protection and remediation efforts are comprehensive and protective of water quality and public health.

11) Will land, as well as water, be evaluated for contamination?

Yes, NMED is evaluating land and soil contamination as part of the remediation and restoration study required by HB-142. The study is designed to determine if there has been environmental contamination of lands and waters on or adjacent to the generating facility and mine, including the presence of toxic metal contaminants.

Under New Mexico's Ground and Surface Water Protection Regulations, contamination that has the potential to impact groundwater must be investigated and remediated to meet water quality standards. Since contaminants can migrate from soil to groundwater, our site-wide assessment includes evaluating soil conditions to identify contamination sources, determine whether pollutants have moved into groundwater, and assess potential risks to human health and the environment.

The study involves reviewing existing data, conducting new sampling where necessary, and applying an iterative, science-based approach to ensure that both groundwater and land contamination are properly addressed. If contamination is identified, appropriate measures will be taken to ensure remediation aligns with regulatory standards.

12) Is abatement different from remediation?

The term "abatement" was used in NMED's presentation because it aligns with the Ground and Surface Water Protection Regulations, which define abatement as the process of investigating and addressing contamination to meet water quality standards. However, the more commonly used term is "remediation". Both terms may be used interchangeably.

13) What is being done about the underground pipes at the site?

Pipes under the San Juan Generating Station are not being used unless they are actively discharging, so there would not be ongoing leaks to test for. For pipes that are still in use, pressure tests are conducted to identify potential leaks. Any historical contamination from past leaks will be assessed through groundwater and soil testing.

NMED's focus is on impoundments and associated engineering, including pipes, because they are known potential sources of contamination. NMED is conducting a site-wide study to identify sources of contamination, which will help determine where pollutants may have traveled and guide further investigation. This includes reviewing existing data, installing new monitoring wells where needed, and evaluating site infrastructure that could contribute to contamination.

As dismantling progresses, NMED continues to gather information about site conditions. While the plant structure itself limits access to certain areas, contamination from past leaks would be expected to move downward into groundwater or accumulate in surrounding soil, which is why those are key areas of investigation. Additionally, as demolition advances, more areas will become accessible for further assessment.

During site investigations in alignment with HB-142, NMED spoke with PNM and demolition workers to ensure NMED understands the current status of the site, the demolition and deconstruction processes, and any potential risks or vulnerabilities. These insights have helped NMED identify where the focus should be to assess on-site contamination and have led to the determination of the placement of wells. By directly evaluating site conditions and infrastructure, NMED can make informed decisions about contamination sources and necessary remediation efforts.

14) What kind of financial assurance was required in the discharge permits?

In a letter dated May 11, 2020, NMED approved PNM's closure plan and financial assurance for DP-1327 and DP-306. NMED also approved a Water Quality Act Reclamation Surety Bond No. 022225064 from Liberty Mutual Insurance Company. The Surety Bond was approved in the amount of $45,960,000. The Surety Bond must stay in effect until PNM completes closure of the facility in accordance with the approved closure plan.

DP-1843 does not have a financial assurance requirement in the permit approval dated March 14, 2018. There will be condition requirements in the renewal of this Discharge Permit to address closure and financial assurance as required by Subsection A of 20.6.2.3107 NMAC.

15) When will NMED report back to the Legislature?

HB-142 provides that "[n]o later than July 1, 2025, the energy, minerals and natural resources department and the department of environment shall provide a copy of the remediation and restoration study to the legislature and present specific measurable steps, informed by input from impacted communities, to oversee and enforce full remediation and restoration plans, including, to the extent possible, the cleanup of the generating facility and mine and prioritizing for employment workers who were previously employed at the generating facility and mine and workers residing in New Mexico." The

remediation and restoration study required by HB-142 is underway, and NMED is committed to meeting the July 1, 2025, deadline.

To ensure transparency and public engagement, NMED has expanded the public comment period until June 30, 2025, to allow additional time for community members to share concerns. Moreover, as outlined in the public information plan, NMED will hold another public meeting before the July 2025 deadline.

Any reference to a "progress report" in the public meeting materials reflects NMED's commitment to keeping the public and the Legislature informed throughout this process. While HB-142 mandates a final remediation and restoration study, NMED is providing status updates and progress reports to ensure transparency. These updates prevent a "black box" approach, allowing community members to understand each step taken, review the data guiding decisions, and actively contribute to shaping the remediation process.

16) Why is PNM also conducting a study?

NMED is enforcing regulatory compliance through two mechanisms: existing discharge permit regulations, which hold PNM accountable for contamination, and the authority granted by HB-142 to expedite remediation efforts.

The study required from PNM under the existing discharge permits ensures that PNM, not NMED, bears the responsibility for assessing contamination and proposing necessary cleanup actions. This is a standard regulatory requirement that compels PNM, as the permittee, to provide data on groundwater impacts and remediation needs.

The HB-142 study, on the other hand, is a state-initiated, independent assessment designed to verify findings, evaluate contamination beyond PNM's reporting and requirements under the Discharge Permits, and inform long-term decision-making.

By requiring PNM to conduct its own study while also pursuing the HB-142 assessment, NMED ensures that responsibility for contamination remains with PNM, not the state, while also securing an independent evaluation to verify and strengthen remediation efforts.

17) Which materials reviewed by NMED will be made available to the public?