

Proposed Administrative Mineral Withdrawal - Upper Pecos Watershed

Frequently Asked Questions

What is an administrative withdrawal?

An administrative withdrawal is a management tool that temporarily limits certain activities on public land, such as hard rock mining and mineral and geothermal leasing, to maintain other public values in the area, such as protecting water, cultural, ecological, scientific, scenic, historical, environmental, air, or archaeological resources.¹ An administrative withdrawal does not affect or limit any other uses of the land.

What is the threat to the Upper Pecos Watershed?

Water is an especially precious resource in New Mexico. Pollution from hard rock mines has contaminated watersheds across the western United States. Toxic spills and acid mine drainage kill fish and wildlife, poison community drinking water, and pose serious health risks. The American public does not receive royalties when international companies extract minerals from public land, and the public often pays for cleanup costs.

This threat is not hypothetical: the Pecos Valley is still recovering from irresponsible mining that contaminated the river in the 1920-30's, and then again in the 1990's. American Metals mined 2 million tons of ore, leaving a tremendous waste rock pile that leached acid into the Pecos River following heavy rains, sanitizing two different sections of the river and creating cancer plumes in the Valley. The mining efforts in the early 1990's by Conoco Inc. caused the death of over 90,000 trout. All these actions required the State of New Mexico to pay over \$28 million of public money in cleanup costs.

Despite this devastating history, an international mining company, New World Resources Ltd., through a Colorado subsidiary, Comexico LLC, wants to develop hundreds of mining claims spanning 4300 acres in the Upper Pecos Watershed within an inventoried roadless area of the Santa Fe National Forest (SFNF), adjacent to the Santa Fe Municipal Watershed.² Comexico has filed applications with the SFNF³ and the New Mexico Mining and Minerals Division (MMD)⁴ to conduct exploratory drilling for copper, gold, and zinc on 20 of the mining claims. The SFNF is preparing an Environmental Assessment to study the project under the National Environmental Policy Act (NEPA).⁵ The MMD will not grant a permit until Comexico has provided evidence that federal approval has been or will be issued, and after the MMD has conducted a public hearing.

¹ See Forest Service Manual (FSM) 2760, p.2 (June 1, 1990) (supplemented Jan. 24, 1995).

² See New World Resources Ltd. Website, <https://newworldres.com/tererro-copper-gold-zinc-project> (last visited Feb. 7, 2023) (explaining that the company has the right to acquire a 100% interest in 20 pre-existing unpatented federal mining claims for a volcanogenic massive sulfide (VMS) ore deposit covering 400 acres, and further stating that the company has staked new Federal mining claims, covering 4,300 acres, that encompass what the company calls "multiple under-explored VMS prospects").

³ <https://www.fs.usda.gov/project/?project=56733>.

⁴ <https://www.emnrd.nm.gov/mmd/mining-act-reclamation-program/pending-and-approved-exploration-applications/pending-exploration-applications-regular/sf040er-tererro-exploration-project/>.

⁵ National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et seq.

In addition to threatening the quality and quantity of critical water resources in the Upper Pecos Watershed, the proposed mining would have negative impacts on cultural resources important to local Pueblos and Tribes, rare native populations of Rio Grande cutthroat trout, wildlife including endangered Mexican spotted owls which have designated critical habitat and protected activity centers in the area, agriculture, recreation, and the local economy.

What is the goal of this proposal?

The goal is to immediately protect the upper Pecos Watershed from the threat of hard rock mining through administrative action, which can be implemented as soon as the withdrawal is proposed. The administrative withdrawal would prevent new hard rock mining claims on approximately 165,000 acres of public land managed by the SFNF and approximately 1,600 acres of adjacent public land managed by the Bureau of Land Management (BLM). An administrative withdrawal would secure temporary protection, pending permanent protection by Congress, and would support the reintroduction and passage of the “Pecos Watershed Protection Act” or similar federal legislation.

Who is working on this proposal?

The Stop Tererro Mine (STM) coalition is a diverse group made up of local community, governmental, tribal, agricultural, business, and conservation partners working to protect the lands and waters in the Upper Pecos Watershed from the adverse effects of hard rock mineral exploration and mining.

What are the core values of the coalition?

The values of the STM coalition include the following:

- Ensure clean and safe drinking water.
- Protect and restore forest, river, and watershed health.
- Protect cultural resources.
- Benefit New Mexico’s economy, acequia communities, and agriculture.
- Maintain and improve fisheries, wildlife habitat, and wildlife corridors.
- Maintain the naturalness and wild character of roadless areas and wilderness quality lands.
- Sustain opportunities for recreation.

What is the authority for administrative withdrawal and how does it affect the use of the land?

Federal law⁶ grants the Secretary of the Department of Interior the authority to withdraw federal public land from:

1. entry, appropriation, or disposal under the public land laws (i.e., the sale of public land);
2. location, entry, and patent under the mining laws⁷ (i.e., hard rock mining); and
3. disposition under all laws pertaining to mineral and geothermal leasing (i.e., drilling for oil, gas, and steam) or mineral materials (e.g., gravel pits).

⁶ Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1702(j) (Section 202, authorizing the “withholding [of] an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws, in order to maintain other public values in the area or reserving the area for a particular public purpose or program”).

⁷ General Mining Act of 1872, 30 U.S.C. §§ 22 et seq.

What are the steps in the process?

1. The Secretary of Interior either proposes a withdrawal “on the secretary’s own motion” or receives an application for withdrawal from the federal agency that manages the public land.⁸ The coalition is asking the Secretary to initiate a withdrawal on her own, but the same result could stem from an application filed by the SFNF and BLM, which manage the land proposed for withdrawal.
2. The Secretary of Interior publishes a “Notice of Proposed Withdrawal” in the Federal Register, stating the extent to which the land will be withdrawn from the operation of the public land laws while the proposal is being considered.⁹
3. The notice starts a temporary withdrawal period called a “segregation” that lasts for up to 2 years to allow time for study, analysis, and public input.¹⁰
4. During the segregation period, the federal agency that manages the segregated lands conducts the environmental review required by the National Environmental Policy Act (NEPA) and prepares an Environmental Assessment or Environmental Impact Statement, as appropriate.
5. The federal agency that performed the NEPA analysis prepares a withdrawal package and submits it to the Secretary of Interior.
6. The Secretary of Interior reviews the withdrawal package, including the NEPA documents, and decides whether to proceed with the withdrawal.
7. For an area of land of 5000 acres or more, the Secretary of Interior can approve a withdrawal that lasts for a period of up to 20 years.¹¹

Will an administrative mineral withdrawal prevent mining in the Upper Pecos Watershed?

Maybe. No new mining claims can be established or developed on lands that have been withdrawn. A withdrawal is, however, subject to “valid existing rights” that predate the withdrawal.¹² Existing mining claimants that are in good standing with BLM are not affected by the segregation or administrative withdrawal until mining operations are proposed. If new mining operations are proposed on withdrawn or segregated lands, the mining claimant must demonstrate valid existing rights. If a mining company such as Comexico can demonstrate that it had valid existing rights at the time of the withdrawal, those rights would remain valid, and the mining claims could potentially be developed, subject to conditions designed to protect environmental and cultural resources and to ensure the proper restoration and remediation of the land.

What is the process for determining whether a mining claim is a “valid existing right”?

If a mining claimant submits a proposed mining plan to the Forest Service on lands that have been segregated or withdrawn, a certified Forest Service mineral examiner would make a mineral investigation of the unpatented mining claim. The mineral examiner's findings, conclusions, recommendations, together with pictures and maps, would be compiled in a “Report of Mineral Examination.” This report forms the basis for the Forest Service to decide whether to contest the validity of the claim. The Forest Service would consider:

⁸ FLPMA, 43 U.S.C. § 1714(b)(1).

⁹ *Id.*

¹⁰ *Id.*

¹¹ FLPMA, 43 USC 1714(c)(1).

¹² FLPMA, 43 U.S.C. § 1701 note (stating withdrawal is subject to valid existing rights).

1. whether the claim was properly “located” prior to implementation of the withdrawal or segregation, which means that a prospector has entered available federal lands and followed procedures for establishing a mining claim;
2. whether the mining claimant has properly maintained the claim by paying annual fees; and
3. whether the claim is supported by a “discovery” of a valuable mineral deposit, which means that the claimant has demonstrated “that the mineral can be extracted, removed, and marketed at a profit.”¹³

If the Forest Service decides to contest the validity of a claim based on the mineral examination, the matter would be referred to the BLM under the regulations of the Department of the Interior, which has decision-making powers in matters relating to all the federal land laws, including the mining laws. The BLM would make a final decision about whether the claim is valid.

What else is being done to protect the Upper Pecos Watershed?

- **Legislative Withdrawal:** Since the administrative withdrawal is temporary (up to 20 years), the coalition is urging New Mexico’s congressional delegation to reintroduce legislation for permanent protection. Legislation called the “Pecos Watershed Protection Act” was introduced in the previous session of Congress, sponsored by Senator Martin Heinrich (S.182) and Representative Teresa Leger Fernández (H.R.5628), and needs to be reintroduced for consideration by the current Congress.
- **Water Quality Protection:** In August 2022, the New Mexico Water Quality Control Commission recognized the significance of the watershed by designating sixteen (16) named tributaries to the Pecos River and ninety-six (96) unnamed tributaries to those surface waters, constituting in total nearly one-hundred eighty (180) miles of streams; and sixteen (16) wetlands consisting of nearly forty-three (43) acres as “Outstanding National Resource Waters” (ONRWs).¹⁴ ONRWs are afforded the highest level of surface water protection in New Mexico and are subject to a legal mandate that prohibits any degradation of water quality.¹⁵
- **Forest Service Environmental Regulations:** The coalition is watching to ensure that the Forest Service meets its responsibility to require that any mining will be conducted in a way that will minimize adverse environmental impacts on surface resources, including water and air quality, cultural resources, wildlife and fisheries, and scenic resources.¹⁶
- **State of New Mexico Environmental Regulations:** The coalition is watching to ensure that the New Mexico Mining and Minerals Division follows state laws and regulations designed to protect the environment and to provide opportunities for public participation.¹⁷
- **County Environmental Regulations:** The counties that could be affected Comexico’s mining proposal have adopted ordinances to protect environmental and cultural resources.
 1. In September 2021, San Miguel County adopted Ordinance No. 09-21-2021-p&z, which established requirements for mineral resource exploration, extraction, and processing

¹³ *United States v. Coleman*, 390 U.S. 599, 600 (1968).

¹⁴ State of N.M. Water Quality Control Commission, Statement of Reasons and Decision, WQCC No. 21-51 (R) (Aug. 10, 2022), available at https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2022/08/2022-08-10-WQCC-21-51-Statement-of-Reasons-and-Order_Upper-Pecos-Watershed-pj.pdf (last visited Feb. 7, 2023).

¹⁵ See 20.6.4 NMAC (Water Quality Standards for Interstate and Intrastate Waters).

¹⁶ See 36 C.F.R. § 228.8 (requirements for environmental protection).

¹⁷ See generally N.M. Mining Act, NMSA 1978, §§ 69-36-1 et seq.; 19.10.1 NMAC et seq.

to protect the citizens and environment from the harmful and hazardous toxic effects and nuisances that result from mining.

2. In August 2019, Santa Fe County adopted Ordinance No. 2019-2, which amended the County's Sustainable Land Development Code to include new regulations for mineral exploration, extraction, and processing to protect the environment, water, air, wildlife, habitat, natural resources, and cultural and historical resources.
- **Wilderness Designation:** The coalition is working with the community and New Mexico's congressional delegation on a proposed wilderness designation or other land protection legislation for a portion of the watershed. No new mining claims can be established in wilderness, and any mining on valid existing claims would need to be conducted "in a manner compatible with the preservation of the wilderness environment" to comply with the Wilderness Act of 1964.¹⁸ The "wilderness environment" is "an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain."¹⁹

How can I or my organization get involved?

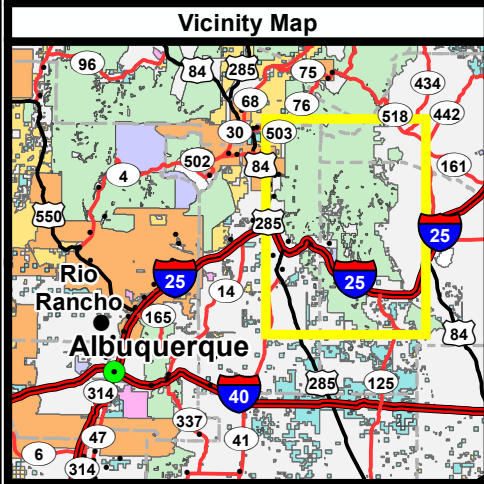
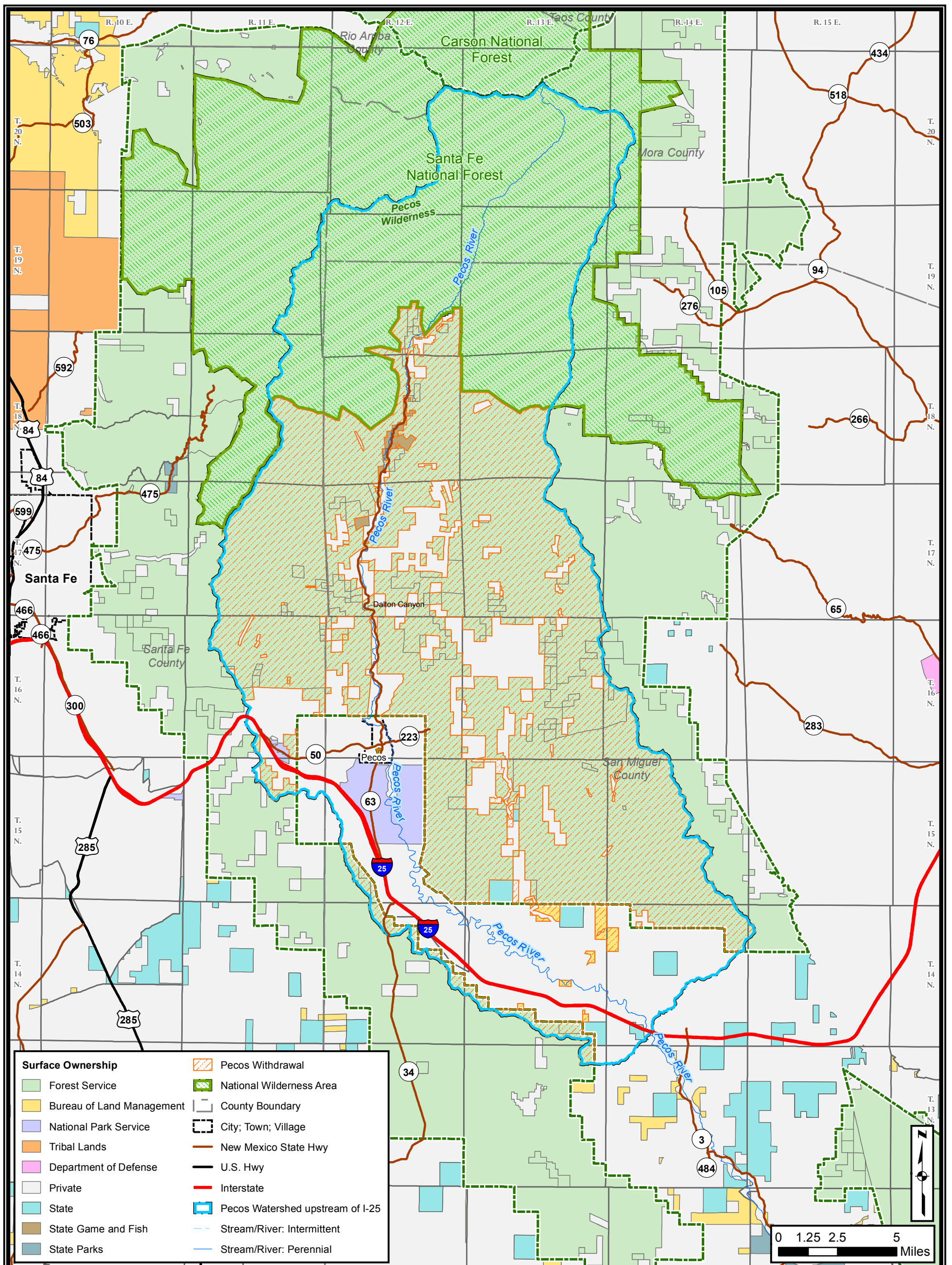
Visit our website: <https://stoptererroamine.org/>

Is there a map of the area proposed for administrative mineral withdrawal?

The current administrative mineral withdrawal proposal is based on the preliminary map prepared for Senator Martin Heinrich prior to the introduction of Pecos Watershed Protection Act in 2020, which he sponsored in the 117th Congress. The map is shown on the following page.

¹⁸ See 16 U.S.C. § 1133(d)(2).

¹⁹ See 16 U.S.C. § 1131(c).



Map Creation Date - 7/9/2020
 Map Revision Date - 9/1/2020 \ Version 6
 Sheet 1 of 1

References
 Data acquired from a variety of sources of differing accuracy, precision and reliability. Features represented by the data may not represent accurate geographic locations. River and stream centerlines taken from the U.S. Geological Survey National Hydrography Dataset (NHD) and carry the same limitations. Ephemeral streams not shown for clarity.

Disclaimer
 The USDA Forest Service makes no warranty, expressed or implied regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification. Creation of this map does not indicate USDA support of this proposal. This represents USDA technical assistance only. These documents remain congressional records in their entirety, even after the completion of the proposed map, and are not USDA records under the Freedom of Information Act (FOIA) or any other law. If USDA receives any request or demand for access to these records under the FOIA or any other authority, USDA will immediately notify the Committee and will respond to the request or demand based upon the understanding that these are congressional, not USDA, records.

**Pecos Watershed, upstream of I-25
 Mineral Withdrawal**

Preliminary Map only

New Mexico Principal Meridian,
 Mora, San Miguel and Santa Fe Counties,
 New Mexico

U.S. Forest Service - Southwestern Region
 Carson and Santa Fe National Forests

Map prepared at the request of U.S. Senator Martin Heinrich