



New Mexico State Surface Water Quality Permitting Program Survey: Results and Analysis

Prepared For:

New Mexico Environment Department (NMED)

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Executive Summary

New Mexico faces many water challenges. One of these challenges is protecting water quality in New Mexico's surface waters. Rivers, streams, lakes, wetlands, and other surface waters sustain the state's culture, economy, and natural ecosystems. The state legislature has asked the New Mexico Environment Department (NMED) to create a state-led permit program. This program would protect water quality in New Mexico's surface waters.

People across the state have different opinions and perspectives about water, permitting, and the idea of a new state-led program. NMED decided to use a brief online survey to better understand stakeholders' perspectives, concerns, and questions. Early input from stakeholders can help NMED shape options for the state-led water quality permitting program and develop informational resources to answer questions about the process.

Key survey results

During the survey period, 416 people submitted responses. Most of the people responding to the survey categorized themselves as interested state residents (61.3%). Only 6% of the people responding to the survey indicated that they currently have a surface water quality permit; these are permits issued by EPA Region 6 in Dallas, TX.

The survey results shed light on levels of support for a state-led surface water quality permitting program, the perceived benefits, the types of questions and concerns stakeholders have on their minds, and the preferred methods of receiving information in the future. This information can help NMED make decisions about how to communicate with and engage the public during all phases of the program development process. Below are some of the key takeaways from the survey.

Most people (82%) who took the survey are very supportive of NMED taking the steps needed to develop a state-led surface water quality permitting program for New Mexico. NMED recognizes that the communication channel for alerting people about the survey opportunity – NMED water-focused email lists – reach people who have signed up to receive water information from NMED. The people responding to the survey on the email lists probably already care a lot about water issues in New Mexico.

Very few people (6%) who took the survey currently have a surface water quality permit. These are the individuals who will likely be most directly affected by a new state-led surface water quality permitting program. The survey results provide some information on how current permittees perceive a potential state-led surface water quality permitting program, but more input from permittees would be beneficial.

People who took the survey indicated their top two benefits of a state-led surface water quality permitting program as 1) Protection for all important surface waters (82%) and 2) Local knowledge of NM's facilities and waters (75%). In addition to those top two benefits, many survey respondents also felt state-led enforcement (46%) is important. These perceived benefits indicate that the state-led surface water quality program should be protective of the state's surface waters, many of which are losing protection at the federal level due to the changing Waters of the United States definition under the Supreme Court's Sackett v. EPA ruling.

Most people who responded to the survey shared concerns and questions about a state-led surface water quality permitting program (72%). Most of their questions and concerns fell under the category

of program implementation (60%). These questions and concerns touched on issues such as staffing levels and training; inspection/compliance/enforcement; program funding and costs; permit fees and fines; monitoring; oversight; transparency; efficiency; scope of permit coverage; and effect on Tribal Nations. The concerns and questions raised by a majority of survey respondents indicates that regardless of level of support or stakeholder type, people want more information about the details of a state-led surface water quality permitting program. This supports the need for early and continuous public outreach and engagement during the program development process that provides regular updates on program implementation decisions and details.

Most people responding to the survey want electronic updates on the state-led surface water quality permitting program. Most prefer updates through emails from NMED's listserv (65.1%); this is likely because many of the people responding to the survey learned of it through an NMED listserv email. Only 38.5% of survey respondents indicated that they want updates through NMED's website. Survey respondents indicated that they prefer virtual meetings (28.1%) over in-person meetings (15.9%). These results highlight the usefulness of the email listserv as a primary communication channel to stakeholders once they are signed up for this service. NMED can continue to encourage stakeholders to add their name to the email list through continued public outreach and engagement activities. When planning engagement meetings for stakeholders, using virtual meetings can be beneficial and preferred for those with adequate internet access.

Next Steps

The survey responses highlight next steps for NMED to consider. Based on the lower numbers of permitted respondents, NMED should engage permittees to better understand their specific perspectives, concerns, and questions related to a state-led surface water quality permitting program. Based on the high number of questions and concerns related to program implementation and program development, NMED should continue to provide information related to these questions and concerns using the NMED listserv, website, and other virtual engagement activities. NMED can refer to the questions and concerns raised in survey responses as Surface Water Quality Bureau staff provide regular updates to the [NMED Surface Water Quality Permitting Program Initiative website](#), create informational resources such as fact sheets and a Frequently Asked Questions (FAQ) document, and plan virtual engagement such as webinar updates when there is new program information to share.

While the state-led surface water quality permitting program is in the early phases of development, NMED is currently taking steps to address many of the survey respondents' questions and concerns related to program implementation. NMED will provide additional details at future public outreach and engagement activities.

Introduction

New Mexico faces many water challenges. One of these challenges is protecting water quality in New Mexico's surface waters. Rivers, streams, lakes, wetlands, and other surface waters sustain the state's culture, economy, and natural ecosystems. The state legislature has asked the New Mexico Environment Department (NMED) to create a state-led water quality permitting program. This program would protect water quality in New Mexico's surface waters.

U.S. Environmental Protection Agency staff in Dallas, TX develop and enforce permits to protect New Mexico's surface water quality. New Mexico is one of three states that does not develop and issue its own permits. NMED is working to develop a state-led water quality permitting program to protect surface water quality in New Mexico.

As an initial step, NMED wanted to understand the perspectives, concerns, and questions of people from around the state. Early input would help NMED shape options for the state-led water quality permitting program and answer questions. NMED decided to gather insight from stakeholders using a brief online survey. This report shares information on the survey and presents survey results.

Survey Overview and Results

The NMED Surface Water Quality Bureau prepared and conducted a brief survey for New Mexicans to share their perspectives, concerns, and questions about a state-led water quality permit program for New Mexico's surface waters. The survey questions are provided in **Appendix A: Survey Questions**.

NMED announced the survey using the following distribution mechanisms:

- NMED SWQB [Surface Water Quality Permit Program Initiative website](#)
- SWQB's email list through the GovDelivery e-mail delivery service (1,982 email addresses as of November 1, 2023)
- The Ground Water Quality Bureau's (GWQB) email list through the GovDelivery e-mail delivery service (1,986 email addresses as of November 1, 2023)
- Emails to entities holding individual NPDES permits
- Additional emails to representatives of key stakeholder organizations not subscribed to SWQB's email list through GovDelivery but identified by SWQB staff

NMED made the survey available on the Surface Water Quality Bureau public comment portal from July 11, 2023 through August 16, 2023. Over the course of the survey period, NMED received responses from 416 individuals.

Respondents by stakeholder type

Question 5 of the survey asked: *What is the perspective you represent? (Pick the option that best characterizes your interest related to state water quality permits for surface water.)*

Although this was not the first question of the survey, these results are summarized at the beginning of this report to provide context for the other survey responses.

Most respondents (61.3%) selected 'Interested state resident' (see **Table 1**). 'Other' stakeholder types represent 8.7% of respondents. Respondents in this category identified themselves largely as environmental activists or having associations that fit into multiple other stakeholder type categories, as

they were unable to select more than one. Representatives of ‘environmental organizations’ and ‘Municipal/Local/County Government’ comprise another 7.2% and 5% of respondents, respectively.

Table 1: Survey respondents by stakeholder type (n=416)

Stakeholder Type	Category	Count	Percent
Livestock/Dairy	Other	1	0.2%
Industry	Other	1	0.2%
Oil & Gas	Other	1	0.2%
Energy Utility & Transmission	Other	1	0.2%
Tribe/Pueblo/Nation	Government	2	0.5%
Federal Facility	Government	3	0.7%
Soil & Water Conservation District	Other	5	1.2%
Mining	Other	5	1.2%
Construction	Other	7	1.7%
State/Federal Agency	Government	8	1.9%
Acequia Association/Irrigation District	Other	11	2.6%
Outdoor recreation	Other	14	3.4%
Agriculture	Other	15	3.6%
Municipality/Local/County Government	Government	21	5.0%
Environmental organization	Other	30	7.2%
Other	Other	36	8.7%
Interested state resident	Resident	255	61.3%
Total		416	100.0%

Support for a state-led water quality permit program for surface waters

Question 1 of the survey asked: *How supportive are you of NMED taking the steps needed to develop a state-led water quality permit program for surface waters in New Mexico?*

Using a scale from very supportive to very unsupportive, most respondents were very supportive (82%) or somewhat supportive (7%) (see **Figure 1**). Only 3% reported lacking the information to form an opinion on the topic.

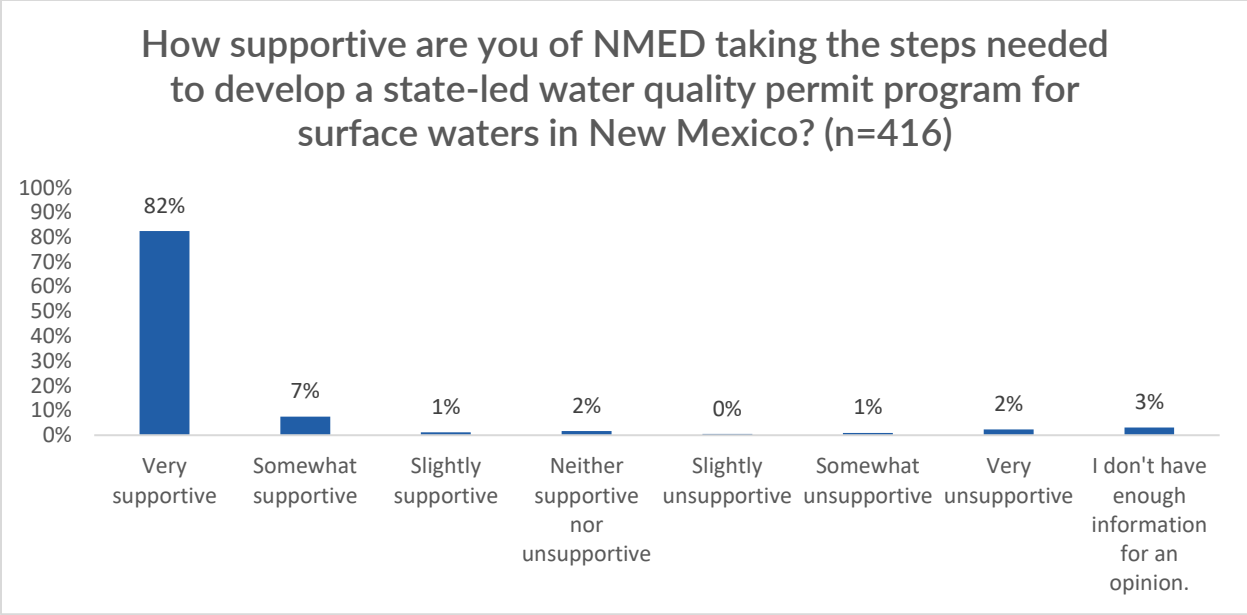


Figure 1: Support for a state-led water quality permit program (n=416)

Table 2 compares very high levels of supportiveness and very high levels of unsupportiveness by stakeholder type. Interested state residents demonstrate the highest percentage of very supportive respondents (66.5%). Although interested state residents represent the highest percentage of very unsupportive respondents (30%), agriculture demonstrates the highest percentage of very unsupportive respondents (20%) within a stakeholder type.

Table 2: High Levels of Supportiveness or Unsupportiveness by Stakeholder Type

Stakeholder Type - Collapsed	Very Supportive	Very unsupportive
Acequia Association/Irrigation District	2.6%	10.0%
Agriculture	2.6%	20.0%
Construction	0.9%	10.0%
Energy Utility & Transmission		
Environmental organization	8.7%	
Federal Facility		10.0%
Industry	0.3%	
Interested state resident	66.5%	30.0%
Livestock/Dairy		10.0%
Mining	0.9%	10.0%
Municipality/Local/County Government	3.8%	
Oil & Gas	0.3%	
Other	7.2%	
Outdoor recreation	3.2%	
Soil & Water Conservation District	0.9%	
State/Federal Agency	1.7%	
Tribe/Pueblo/Nation	0.6%	
Total	100%	100%

Rationale for level of support of a state-led water quality permit program

Question 2 of the survey asked: *Please share some thoughts on why you answered Question 1 as you did.*

This open-ended question gave survey respondents an opportunity to explain their level of support for NMED taking the steps needed to develop a state-led water quality permit program for surface waters in New Mexico (i.e., Question 1).

NMED's contractor used comment codes to sort the open-ended responses providing rationale for levels of support into major theme categories and subcategories. The comment codes used to categorize the responses to Question 2 are in **Appendix B: Comment Codes**.

Below is a summary of Question 2 responses by self-identified stakeholder type. It is important to look at responses by stakeholder type to help characterize the perspective and rationale of specific interests and groups. The summary highlights responses from stakeholders by level of supportiveness, grouping Very Supportive and Somewhat Supportive into one category and Very Unsupportive and Somewhat Unsupportive into another category.

Acequia Association/Irrigation District

Very/Somewhat Supportive

Respondents who are somewhat and very supportive (9/82%) cited water quality and quantity most frequently (6), followed by local knowledge/control (2). Responses mentioned the following rationale for being very supportive:

- Water Quality/Quantity responses focused on the need for clean water for agricultural businesses, wildlife, and the recreation industry; water quality pressures due to climate change and growing population; and the desire to keep water pollutant-free.
- Local Knowledge/Control responses focused on control is in the best interest of the state and the state "should assume responsibility for protection of its own waters."

Very/Somewhat Unsupportive

One respondent indicated that they are very unsupportive due to regulatory issues. This respondent stated that New Mexico surface waters should be used for the benefit of New Mexico residents and this program sounds like a water grab.

Agriculture

Very/Somewhat Supportive

Respondents who are somewhat and very supportive (9/60%) gave responses that cited water quality and quantity most frequently (6), local knowledge/control (1), and regulatory issues (1). The respondent who mentioned being somewhat supportive stated they need more information. Responses mentioned the following reasons for being somewhat and very supportive:

- Water Quality/Quantity responses focused on the need for a permit system that could help track use and water quality to protect NM’s water resources.
- Local Knowledge/Control response mentioned concerns about contaminants in surface waters that will make them neither fishable nor swimmable; drought, climate change, and limited water quantity require the state to preserve and protect water; and the need to support uses such as recreation (fishing, hiking, camping) and crop irrigation.
- Regulatory Issues response focused on the need for the state to take over governance of waters that the federal government will no longer regulate.

Very/Somewhat Unsupportive

Two respondents stated that they are very unsupportive (2/13%) due to program implementation and regulatory issues. One comment stated that government involvement increases regulatory burden and cost to operations. Another comment shared concerns about potential litigation for livestock using surface water pools after rain events without a permit and the burdensome economic impact for ranchers that rely on surface water.

Construction

Very/Somewhat Supportive

Respondents who are very supportive (3/43%) provided responses that cited local knowledge/control most frequently (3). Two respondents, one very supportive and one somewhat supportive, identified regulatory issues affecting their level of support. Responses mentioned the following reasons for being very supportive and somewhat supportive:

- Local Knowledge/Control responses acknowledge that New Mexico’s land is unique and is especially sensitive and erosive; and suggest avoiding the use of a one-size-fits-all set of rules and regulations by the federal government.
- Regulatory Issues responses focused on the desire to eliminate restrictions on construction unless it is taking place immediately adjacent to “real water” like the Rio Grande. Regulations to keep dirt off dirt roads or out of dirt arroyos make no sense. Another response mentioned that this is an opportunity to “start over and not duplicate the errors of the Clean Waters Act in storm water runoff.”

Very/Somewhat Unsupportive

One respondent indicated that they are very unsupportive due to program implementation considerations. Concerns raised include staffing to enforce the permit, bias in permit enforcement, and skepticism that NMED could build and publish an efficient permitting system.

Energy and Utility Transmission

Need More Information

The one respondent to this question indicated that they need more information. The response focused on program implementation as follows:

- What types of permits will be required if EPA and the Army Corps of Engineers revise the WOTUS rule? Will there be established timelines in the permit process for reviews?

Environmental Organization

Very/Somewhat Supportive

Respondents in this stakeholder type all indicated that they are very supportive. Of the responses provided, most focused on water quality/quantity (10), followed by regulatory issues (8), local knowledge/control (6), all or a combination of these issues (5), and program implementation (1). Below is a summary of the reasons environmental organization respondents stated they are very supportive under each of these comment categories.

- Water Quality/Quantity focused responses mentioned the following:
 - ✓ Pollutants from industries.
 - ✓ Wildlife/habitat for recreational enjoyment.
 - ✓ Water supply/quantity for drinking water and considerations related to drought and climate change.
 - ✓ Quality of life in an arid state where surface water is needed for a sustainable economy and quality of life because all life depends on water.
- Regulatory Issues focused responses focused on the Waters of the U.S. definition affected by the Supreme Court's recent Sackett v. EPA decision that will impact waterbodies with intermittent flows, including wetlands, in New Mexico.
- Local Knowledge/Control focused responses highlighted the need for staff familiar with New Mexico's water to develop meaningful and enforceable permits and how local control could lead to more efficiently coordinating with the water quality standards review.
- Combination responses integrated a variety of topics including:
 - ✓ Reduced protections for the state's wetlands and intermittent and ephemeral streams due to the Supreme Court's Sackett v. EPA decision.
 - ✓ Climate change impacts to water quality and quantity.
 - ✓ The urgent need for a strong state permitting program that addresses both point source discharge and dredge and fill permits developed by New Mexican permit staff who understand the state's water resources.

- Program Implementation responses focused on stronger enforcement of water quality standards.

Very/Somewhat Unsupportive

No Environmental Organization respondents expressed unsupportiveness.

Federal Facility

Very/Somewhat Supportive

Two respondents indicated they are somewhat supportive (2/67%). One respondent focused on program implementation, and one needed more information. The program implementation response acknowledged that “NMED is the agency that best understands surface waters in New Mexico” but highlighted concerns related to identifying roles and responsibilities that interface with other state agencies (i.e. groundwater wells and interactions with NMOSE) and providing resources for the following:

- Water quality standards support (to include impairment listings, TMDLs, special water quality studies, antidegradation evaluations and existing use evaluations) in addition to the resources needed for typical permitting staff;
- Compliance assistance;
- Permit applications and permit modifications to support efficient processing.

The response that indicated a need for more information requested more details about program implementation.

Very/Somewhat Unsupportive

One respondent indicated they are very unsupportive due to program implementation because EPA has effectively run the NPDES program in New Mexico. This respondent expressed concern about program fees and fines through a state-led process that should not be a revenue source for NMED considering EPA has done well administering the program without fees.

Industry

Very/Somewhat Supportive

The single respondent indicated that they are very supportive but did not specify a rationale.

Interested State Resident

Very/Somewhat Supportive

Respondents (212/83%) indicated that they are very supportive and somewhat supportive. Of the supportive responses provided, most focused on water quality/quantity (92), followed by local knowledge/control (51) and regulatory issues (48), all or a combination of these issues (9), and program

implementation (5). Some needed additional information (5). Below is a summary of the reasons interested state residents stated they are very supportive under each of these comment categories.

- Water Quality/Quantity focused responses mentioned the following:
 - ✓ Quality of life because of the need for clean water for all uses. One commenter stated, “Agua is Vida. In our desert state we need all the protections we can create for our waters!”
 - ✓ Water supply/quantity concerns due to drought, water scarcity, groundwater recharge. One commenter mentioned that wetland protection will help to increase the water table and available water in a state that has a chronic water deficit.
 - ✓ Pollutants from a variety of sources that are a concern for protecting surface water (both ephemeral and perennial waters), which also influences groundwater.
 - ✓ Climate change challenges that accelerate and exacerbate the existing threats to New Mexico’s waters.
 - ✓ Wildlife/habitat that will be impacted by limited protections for ephemeral waters.
- Local Knowledge/Control focused responses mentioned the following:
 - ✓ Permit expertise of state government and the importance of collaboration among all surface water managers. One commenter stated, “Local regulators know the environment here better, as well as being present on the ground day to day. This affords a better perspective for regulators when it comes to permitting, data collection and assessment, and oversight.”
 - ✓ Knowledge of New Mexico’s waters that are unique and make the state the best entity to protect waters. One commenter stated, “...we are an arid state with a large percentage of smaller waterways and closed basins, we need a program that is reflective of our unique ecology, economy and culture.”
- Regulatory Issues focused responses mentioned the Supreme Court’s decision in Sackett v. EPA related to the definition of waters of the U.S. and emphasized the urgent need for New Mexico to protect ephemeral and intermittent streams, as well as wetlands, through a state permitting program. Commenters cited the need for consistency in regulatory protections that are not subject to change at the federal level over time due to changing definitions. At least two commenters expressed support for more the state’s regulation to be more stringent than federal regulation.
- Combination responses integrated a variety of topics including:
 - ✓ Reduced protections for the state’s wetlands and intermittent and ephemeral streams due to the Supreme Court’s Sackett v. EPA decision.
 - ✓ Concerns about the challenge to set up a state permitting program in a timely manner with current funding from the legislature.

- ✓ Reducing regulatory uncertainty for New Mexico’s businesses affected by water regulations.
- Program Implementation focused responses highlight the need for competent local scientists to evaluate permit applications, consistent evaluation and enforcement, and a lack of federal responsiveness to information requests.
- Need More Information responses came from those stating they are somewhat supportive. Requested information included:
 - ✓ Description of program set-up and operations.
 - ✓ Qualifications of staff people administering the program, as well as geographic location.
 - ✓ Whether representatives from oil & gas and mining would be represented or have a role in managing the program.
 - ✓ Whether there will be public notification of meetings, applications, and permit violations.

Very/Somewhat Unsupportive

Of Interested State Residents responding they are somewhat or very unsupportive (4/2%), they cited program implementation.

- Program Implementation focused responses mentioned staff competence, capacity, and bias, as well as the need for EPA to serve as a buffer between NMED and permittees. In addition, responses related to program implementation mentioned funding, a potential lack of transparency, and programmatic shifts with changes in state government leadership.

Need More Information

Some Interested State Residents identified a need for more information (4/2%) about NMED’s standards for monitoring and how the proposed permit would affect the average rural New Mexican.

Livestock/Dairy

Very/Somewhat Supportive

The single respondent did not express support for a state-led permitting program.

Very/Somewhat Unsupportive

The single respondent expressed being unsupportive of a state-led water quality permitting program because “NMED has caused a lot of problems in the industry.”

Mining

Very/Somewhat Supportive

Respondents that are very supportive (3/60%) focused on water quality/quantity, local knowledge/control, and regulatory issues. Below is a summary of the reasons mining respondents stated they are very supportive under each of these comment categories.

- Local knowledge response focused on state being more qualified and knowledgeable to administer state permits and EPA staff are too remote and don't understand state-specific conditions.
- Water quality/quantity response focused on the benefits of having a state-led program for water quality and the state's ecosystems.
- Regulatory issues focused response mentioned concerns about the impacts of the recent Supreme Court Sackett v. EPA decision.

Very/Somewhat Unsupportive

One respondent indicated that they are very unsupportive because New Mexico already has surface water regulations and protections administered by EPA.

Municipality/Local/County Government

Very/Somewhat Supportive

Respondents indicating that they are somewhat supportive and very supportive (18/82%) provided responses that focused on local knowledge/control (7), program implementation (6), water quality/quantity (3), all or a combination of these issues (2). Below is a summary of the reasons interested state residents stated they are somewhat supportive and very supportive under each of these comment categories.

- Local Knowledge/Control responses mentioned that New Mexican permit staff would have more familiarity with the region, land use, precipitation patterns and the stakeholders, as well as a vested interest in the program.
- Program Implementation responses mentioned a concern about NMED's past lack of responsiveness to requests for assistance; a concern about creating another department within NMED for this program; a suggestion to model the state-led permitting program after the existing EPA program to avoid reinventing the wheel; and lack of staffing at EPA Region 6 to renew permits (e.g., the expired Middle Rio Grande Watershed Based Permit in effect due to administrative continuance) or issuing the delayed state-wide watershed based permit.
- Water Quality/Quantity responses mentioned the need to protect all waters to ensure it is safe for all aquatic life and for recreational use. They also noted the importance of monitoring

contamination at a local level given recent changes to EPA’s regulatory capacity and the ephemeral nature of New Mexico’s waterways and sensitive stormwater outfall locations.

- Combination responses from somewhat supportive respondents integrated information related to all the above topics, including:
 - ✓ the importance of monitoring contamination at a local level given recent changes to EPA’s regulatory capacity and the ephemeral nature of New Mexico’s waterways and sensitive stormwater outfall locations.
 - ✓ the significant expense of taking over the permitting program from the EPA and concerns about where the funding would come from to create a state primacy program for NPDES in New Mexico.

Very/Somewhat Unsupportive

No respondents in this stakeholder category indicated that they are very unsupportive.

Needs More Information

Two respondents indicated needing more information. One mentioned that NMED has been proactive in helping municipalities in their time of need. The other stated “At this time UNM does not oppose or support NMED assuming primacy for NPDES permits. UNM’s support or opposition significantly depends on the proposed rules. Therefore, UNM doesn’t currently have enough information for an opinion.” This response went on to say that “UNM would generally support state-led primacy if:

- Proposed rules foster an educated healthy and economically vigorous New Mexico,
- Cooperative Programs remain a cornerstone of the proposed rules,
- State-led permits remain free from programmatic and administrative fees and
- Watershed-Based Permits can be maintained.”

Oil and Gas

Very/Somewhat Supportive

The single respondent in this group stated they are very supportive and that they need certainty on water.

Other

Very/Somewhat Supportive

Respondents indicating that they are somewhat supportive and very supportive (29/81%) provided responses that focused on water quality/quantity (10), local knowledge/control (8), regulatory issues (3), program implementation (2), and all or a combination of these issues (2). Below is a summary of the reasons respondents identifying as “other” stated they are somewhat supportive and very supportive under each of these comment categories.

- Water Quality/Quantity focused responses mentioned concerns related to oil and gas operations, produced water, grazing near riparian areas, spills, groundwater connections to surface water, PFAS, uranium mining, and the missed opportunity to use green stormwater infrastructure to control the quantity and quality of water.
- Local Knowledge/Control responses mentioned the need for NMED as a capable, knowledgeable, motivated organization to take control of the permitting process and make it specific to the arid climate and unique ephemeral arroyos with more stakeholder involvement. Respondents also mentioned that a state-led program would improve the swiftness, accuracy, appropriateness, and effectiveness/outcomes.
- Regulatory issues focused responses mentioned the Supreme Court’s Sackett v. EPA decision and the loss of federal wetland protections and the need for a state permitting program to fill that gap, as well as the regulatory uncertainty for New Mexico’s businesses and economy with changing definitions.
- Program Implementation focused responses shared concerns regarding funding and enforcement. One respondent specifically mentioned the need for “robust recurring revenue with a mix of permit fees, document review fees, annual fees, and a significant component of general fund (30% minimum)” and suggested that an effective enforcement program MUST stand apart from the permitting program and be funded by (mostly) general fund.” Another somewhat supportive respondent shared a concern about the state’s personnel expertise.
- Combination responses integrated information related to all the above topics. One response mentioned that the state should be involved in permitting but has observed other state’s programs facing challenges due to “a lack of technically qualified staff, high employee turnover rates, and unrealistic water quality objectives.” Another response mentioned climate change impacts on water and the need for strong monitoring.

Very/Somewhat Unsupportive

One respondent indicated that they are somewhat unsupportive. This respondent focused on program implementation in their response, stating that the current processes are working reasonably well and that it will be expensive and require significant new NMED staff positions that may be challenging to fill.

Needs More Information

Two respondents mentioned needing program implementation information on the details of a state-led program. One expressed that a state-led program might face understaffing which would affect the timing of permit applications, reports, and other activities and, as a result, place more burden on the regulatory community. The other questioned who would oversee the program.

Outdoor Recreation

Very/Somewhat Supportive

Respondents indicating that they are somewhat supportive and very supportive (12/86%) provided responses that focused on water quality/quantity (4), program implementation (3), and local

knowledge/control (2). Below is a summary of the reasons respondents in the outdoor recreation group stated they are somewhat supportive and very supportive under each of these comment categories.

- Water Quality/Quantity focused responses mentioned the need to better monitor and share information about pollutants in waterways; dramatic changes due to weather and human uses; the scarcity of surface waters, and threats to ecosystems.
- Program Implementation focused responses mentioned that NMED's ability to regulate the waters of New Mexico in all perennial and ephemeral channels is contingent on having permitting primacy and the staff and budget capacity, as well as education through permitting to help protect water resources.
- Local Knowledge/Control responses mentioned the need to take care of water resources more locally without politicization and not allow the federal government to have power over New Mexico's waters.

Very/Somewhat Unsupportive

No Outdoor Recreation respondents indicated that they are unsupportive.

Needs More Information

One respondent mentioned needing information on the target audience for permits, permit requirements, cost and program expenditures.

Soil and Water Conservation District

Very/Somewhat Supportive

Respondents indicating that they are somewhat supportive and very supportive (4/80%) provided responses that focused on local knowledge/control (1), water quality/quantity (1), program implementation (1), and regulatory issues (1). Below is a summary of the reasons soil and water conservation district respondents stated they are somewhat supportive and very supportive under each of these comment categories.

- Local Knowledge/Control response mentioned that “the permitting process could be more efficient with regulators [that are] more familiar local conditions.”
- Water Quality/Quantity response stated that water quality is decreasing everywhere and science-based regulation is needed to slow down declining water quality.
- Program Implementation focused responses highlighted that a state-led permitting program would result in greater efficiencies and time reductions in permit issuance given the high level of state participation in the current federal permitting process.
- Regulatory issues focused response mentioned protecting water resources in New Mexico even if the federal government will not.

Very/Somewhat Unsupportive

One respondent indicated that they are somewhat unsupportive (1/20%) and mentioned program implementation concerns because there are currently wastewater treatment permits in place.

State and Federal Agency

Very/Somewhat Supportive

Respondents indicating that they are somewhat supportive and very supportive (6/75%) provided responses that focused on regulatory issues (3), program implementation (2), and local knowledge/control (1). Below is a summary of the reasons state and federal agency respondents stated they are somewhat supportive and very supportive under each of these comment categories.

- Regulatory issues focused response mentioned protecting water resources in New Mexico even if the federal government will not.
- Program Implementation focused responses mentioned that a state-led permitting program would benefit New Mexico but that it should not overburden permittees and asked about the need for New Mexico Energy, Minerals and Natural Resources Department (EMNRD) to obtain a statewide permit for state firefighting operations.
- Local Knowledge/Control response mentioned that New Mexico can do a better job of protecting New Mexico's surface waters.

Very/Somewhat Unsupportive

No state and federal agency respondents were very or somewhat unsupportive.

Tribe/Pueblo/Nation

Very/Somewhat Supportive

Respondents indicating that they are somewhat supportive and very supportive (2/100%) provided responses that focused on water quality/quantity (2). These responses are summarized below.

- Water Quality/Quantity responses noted that “Water is important to our economy and the way of life, so we have to protect it” and “With climate change influencing water supply and drought becoming a challenge year after year, there is a need to face this challenge.”

Benefits of a state-led water quality permit program

Question 3 of the survey asked: *From your perspective, what are the top three benefits of having a state-led water quality permit program for New Mexico surface waters?*

Respondents selected from a list of benefits the top three perceived benefits of having a state-led water quality permit program for New Mexico surface waters. Across all respondents, the most frequently selected benefits were 'Protection for all important surface waters' and 'Local knowledge of NM's facilities and waters,' selected by 82% and 75% of all respondents, respectively (see **Figure 2**).

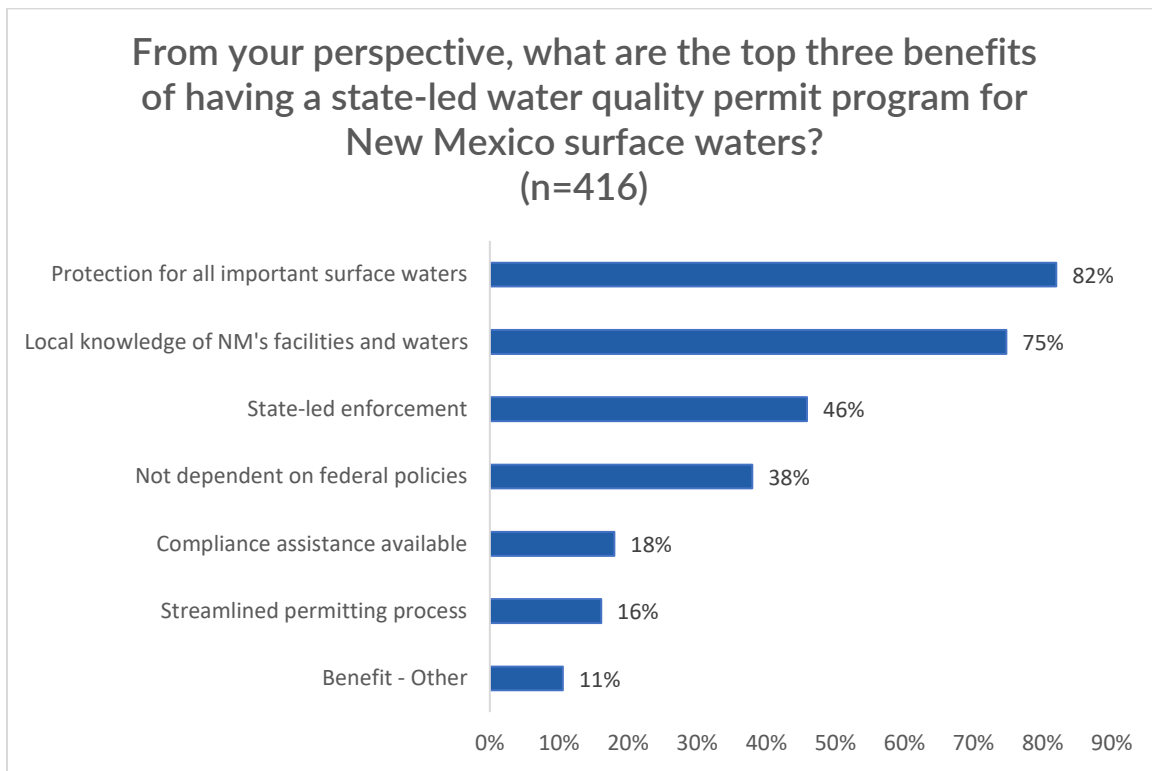


Figure 2: Top three benefits of having a state-led water quality permit program (n=416)

Questions and concerns about a state-led water quality permit program

Question 4 of the survey asked: *What concerns or questions do you have about a state-led water quality permit program for New Mexico's surface waters?*

This question was intended to give survey respondents an opportunity to explain the questions or concerns they have about a state-led water quality permit program for New Mexico. The goal of this survey question is to better understand the type of information that NMED should include in outreach materials and engagement activities throughout the program development process to address concerns and educate stakeholders. In many cases, the responses provided to this question align with the responses provided for Question 2 (rationale for level of support of a state-led water quality permitting program). NMED used comment codes to sort the open-ended responses into major theme categories and subcategories. The comment codes used to categorize the responses to Question 4 are in **Appendix B: Comment Codes**.

Approximately 322 respondents provided some type of answer to this question, but only 299 responses fell into the comment coding categories used to analyze survey results. Below is an overall summary of concerns and questions from all survey respondents providing an answer to Question 4. Comments are grouped by major category with some discussion of applicable subcategories. Unlike the answers to Question 2, the answers to Question 4 are not further stratified by stakeholder or level of support. The rationale for keeping all responses grouped by major category is that all stakeholders should receive the same information, regardless of their specific interest groups, as well as level of support. It is important for NMED to understand and attempt to address the range of stakeholders' concerns and questions during the program development process.

Below is an overview of how the 299 responses to Question 4 break down among the major categories:

- Program Implementation (180)
- Program Development (42)
- Regulatory Issues (21)
- Combination of Topics (21)
- Water Quality/Quantity (21)
- Local Knowledge/Control (7)
- Needs More Information (7)

The questions and concerns raised under each category touch on specific issues that NMED can consider during the development of a state-led water quality permit program. Below are highlights of the category-specific questions and concerns. The bullets provided under each category are direct quotes from the survey responses.

Program Implementation Questions and Concerns

Staffing Levels and Training. Approximately 21 responses focus on staffing concerns, with staffing raised another 31 times in responses under the "all" and "other" subcategories for program implementation, as well as the overall Question 4 "combination/all" category. Responses highlight questions and concerns around securing the resources needed to increase staffing levels; finding qualified state staff; and

providing the necessary training for staff who administer the program. Examples of direct responses that share staffing levels and training concerns and questions include:

- Consistent money for training and staffing should be part of the program.
- I'm concerned that we do not have the staffing or in-state expertise to enforce it well.
- ...the sheer number of staff necessary for such an endeavor is challenging, particularly when budget shortfalls or cutbacks ensue.
- The NMED is constantly understaffed and struggles to position personnel in the areas of the state where they are tasked with enforcing regulations. This leads to mostly Santa Fe-based state personnel that are out of touch with the abilities and needs at the local level. Will the state of NM be hiring experienced personnel to assist with this program or just shift existing state personnel to accommodate this project?
- Does New Mexico have anyone with the qualifications, standards, and enforcement capabilities as the EPA?
- How fast can you staff up to begin this important task?
- All state agencies have been short on employees lately, some because of covid and some as a result of lack of funding. Staffing levels have [to] be adequate to implement and maintain the program.
- Would there be additional staff dedicated to this program? State offices are already understaffed and adding more work to them would mean less attention to existing programs.

Inspections/Compliance/Enforcement. Topics of inspections, compliance, and enforcement were the focus of 17 responses to Question 4. These topics are also mentioned 50 times in responses under the “all” and “other” subcategory for program implementation, as well as the overall “Combination/All” category. Responses that mentioned enforcement and compliance concerns and questions frequently included concerns about adequate funding and staffing, regulatory authority and processes, and compliance approaches. Examples of direct responses that share inspection/compliance/enforcement focused concerns and questions include:

- Many of my producers view the department as a harsh regulator offering little education and assistance. NMED must work to change this approach and work on a more education-driven compliance approach.
- Will enforcement be prompt and non-political?
- Who is managing permitting and especially enforcement. Are there resources available to fund such processes and how will this be prioritized.
- What would NMED enforcement look like?
- How will NM adequately fund and provide resources to staff this permitting and enforcement effort?
- There should be a robust enforcement component & an effort to get all sources of surface water degradation identified & equitably covered by the permit program.
- I'm concerned that we do not have the staffing or in-state expertise to enforce it well. I'm concerned that a future anti-environmental governor will gut the program or halt enforcement. The protections need to not just be on paper but enforced on the ground as well.
- How will NMED handle transfer of federal actions in process (permits, enforcement actions)?

- Would NMED consider streamlined enforcement actions such as an ESO (<https://www.epa.gov/enforcement/revised-expedited-settlement-agreement-program-pilot-construction-stormwater>)?
- As regulations are developed, NMED should provide clarity on enforcement and appeal processes.
- Even further, NMED will need additional resources if it is to adequately enforce any new permitting program.
- Enforcement: Will the program have a parallel enforcement program? How will it be funded? Will additional attorneys be required? Is the existing statutory framework sufficient for effective enforcement?

Program Funding/Costs. Of the 184 responses in the program implementation category, 22 specifically focus on funding as a primary theme. Funding is mentioned another 42 times in responses that fall into the “all” category or the “other” subcategories for program implementation, as well as the overall “Combination/All” category. Many responses highlight concerns and questions about adequate, sustainable funding to support a state-led water quality permitting program. Examples of direct responses that share funding concerns and questions include:

- Can we get the needed funding consistently?
- Does the state have enough resources to implement a permit system and to monitor permits?
- Need to use oil and gas money for now to do this but have a plan for phasing in revenue sources from other places in the state budget once oil and gas revenues start to taper off.
- My concern is that NM would not allocate enough funding to support this program, which would diminish the benefits it could provide. This could lead to lack of enforcement, complaints about the length of time to get a permit, etc.
- My major concern is how a state-led water surface water protection program will be funded if the state assumes a bigger role in protection of its surface waters.

Permit Fees and Fines. Two program implementation responses specifically focus on permit fees and fines as a primary theme. Fees and fines are mentioned another 7 times in responses that fall into the “all” category or the “other” subcategories for program implementation, as well as the overall “Combination/All” category. Responses highlight concerns and questions about the process for establishing fees, the use of fees to fund the program. Examples of direct responses that share concerns and questions focused on fees and fines include:

- How will NMED go about establishing permit fees (other than going to the WQCC)? Will there be stakeholder meetings? If so will they be used to achieve some kind of consensus?
- Also developing the program so it becomes at least somewhat funded by permit fees coming in.
- How much general fund will be applied on a recurring basis? Or will it be wholly reliant on fees? If the latter don't even bother.
- What are permit fees anticipated to be?
- It will get turned into another revenue stream for the state with ever increasing fees.
- Biggest concern is the relative cost of compliance for primarily a "conveyor" and not a "generator" of stormwater. The permit application and renewal dollar amounts must be fairly

assessed for all of New Mexico given that authorization to discharge stormwater will be issued by the state. The permit[t]ees of the watershed-based permit have established the Compliance Monitoring Cooperative (CMC) to equitably share the cost of monitoring stormwater quality in the urbanized area. This framework of funding the CMC takes into account factors such as population served and jurisdictional area.

- The concern is that the state will handle it like the City of Albuquerque, which attempts to comply in all respects with the existing EPA policies, accomplishing nothing more than transferring administrative costs from the feds to the local authority. That makes the local authority add more fees and costs that again benefit no one except the government employees that administer the programs.

Monitoring. Two program implementation responses specifically focus on monitoring as a primary theme. Monitoring is mentioned another 6 times in responses that fall into the “all” category or the “other” subcategories for program implementation, as well as the overall “Combination/All” category. Responses highlight concerns and questions about water monitoring, specific pollutants including PFAS and other forever chemicals. Mention of the word monitoring in the context of program oversight falls into the “Oversight” category (see below). Concerns and questions are often linked to other issues, such as funding, staffing, and training. Examples of direct responses that share concerns and questions focused on monitoring include:

- Data Collection and Monitoring: How will the state gather and analyze the necessary data to assess water quality accurately? Will there be a standardized monitoring system to track changes and improvements over time?
- A second concern is the infrequency of water quality monitoring throughout the state which is important for detecting and managing both point source and non-point source impairments.
- My concerns are that NMED is often understaffed and underfunded and is therefore unable to adequately monitor and care for our water.

Oversight. Eight program implementation responses specifically focus on oversight as a primary theme. Oversight is mentioned another 5 times in responses that fall into the “all” category or the “other” subcategories for program implementation, as well as the overall “Combination/All” category. Responses highlight concerns and questions about program oversight, monitoring, and accountability. Concerns and questions are also often linked to other issues, such as funding, staffing, and training. Examples of direct responses that share concerns and questions focused on oversight include:

- Lack of training for those who will monitor the program.
- Permitting monitoring and enforcement needs to be adequately funded and staffed.
- How would costs of permitting process related monitoring & enforcement be covered?
- Please do a really good job at setting quality standards and by relentlessly monitoring compliance.
- How will accountability be ensured?
- To whom or to what agency will the program be accountable?
- That all who participate & administer this program are held accountable for maintaining the integrity of this program. That corruption is not allowed to enter the system.
- Will there be an oversight agency?

Transparency. The topic of transparency related to program implementation had 20 responses. Issues related to transparency are mentioned in 2 responses that fall into the “all” category or the “other” subcategories for program implementation, as well as the overall “Combination/All” category. Transparency related concerns and questions touch on issues of clarity, fairness, influence, citizen involvement, and communication. Examples of direct responses that share concerns and questions focused on transparency include:

- How will citizens be able to monitor this work or weigh in on the quality of enforcement?
- I am concerned that it would be infiltrated by industry with money and manpower and that under certain state administrations proper administration and enforcement would be conveniently overlooked.
- My main concern is that it's done right and reported accurately.
- Potential pitfalls: lack of transparency to the public; special attention and treatment for special interests; and a blanket disregard for federal environmental policies.
- As always, fairness and clarity are essential in a permit program.
- Transparency and proper education of the public.
- How will information about the permit program (applications; deficiencies; corrective actions including risk management) be communicated (in plain English) to the public?
- I would be concerned about the influence of oil and gas on an NM state-led program. Obviously, that industry brings in a lot of money for the state, and I could see a state agency that is largely funded by that money rolling over too easily in instances where a permit is on the line.
- Helping utilities understand the expected process ahead of time and be a part of the transition timeline will be important in communicating the changes with the regulated entities to help it be successful.

Efficiency. The topic of efficiency related to program implementation had 9 focused responses. Issues related to transparency are mentioned in 5 responses that fall into the “all” category or the “other” subcategories for program implementation, as well as the overall “Combination/All” category. Efficiency related concerns and questions touch on issues of cumbersome permitting processes, approval wait times, red tape, additional bureaucracy, and overall pace of developing a state-led water quality permitting program. Examples of direct responses that share concerns focused on efficiency include:

- My concern would be that a permit applicant would have to do two separate permit applications, one for the federal government and one for the state department. This should be avoided.
- I fear the permitting process may take longer, as seen with other NMED-held permits.
- Just the time it takes to process the paperwork and the unbelievable amount of back and forth on paperwork to finally get to the end.
- Broadly, New Mexico agencies fail to demonstrate program efficiencies. A state-led program would likely follow suit and cause delays.
- Slow permit review times, overly burdensome requirements such as public notice, under-staffing at the bureau level, employee turnover at the bureau level, permit application fees, permit compliance fees, overly restrictive regulations over-regulation of non-sensitive areas, over-regulation of benign runoff. I fear a one-size fits all type of program that places unrealistic burdens on small facilities. More details are needed.

- A third concern is the slow pace at which development of a state-led water quality permit program appears to be proceeding.

Scope of Permit Coverage. The topic of permit coverage scope related to program implementation had 3 focused responses. Issues related to permit coverage scope are mentioned in 5 responses that fall into the “all” category or the “other” subcategories for program implementation, as well as the overall “Combination/All” category. Permit coverage scope related concerns and questions touch on issues of which sectors would be required to obtain permit coverage, and whether any aspects of the permitting program would remain with EPA. (Issues pertaining to defining waters of the state fall into regulatory issues below.) Examples of direct responses that share concerns focused on permit coverage scope include:

- If you are going to get the support of the agriculture industry on getting a surface water permitting program in place, then Agriculture is going to have to be exempt from any and all restrictions.
- Would this program bring the entire authority of CWA protections under the State of NM: permitting, monitoring, enforcement, and other implementation measures? Or would NM still rely on the EPA to implement certain aspects in NM?
- It is also critical that a water quality permit program take into account the unique challenges posed by New Mexico's oil and gas industry. Given the size and scope of this particular industry - and the staggering volume of toxic waste generated by it - it is critical that a state water quality permitting program tackle this industry head-on.
- Expansion of a state permitting program to cover facilities not currently subject to federal permitting and how federal CWA requirements--not otherwise applicable--might be applied to those facilities through a state program.
- Does NMED propose to issue general permits (e.g. construction; multi-sector) like EPA? If so what will the process for coverage look like?
- Are there some baby steps NMED can take in case the push back to a full-blown permit program is too intense? If so what would some of those steps be?
- I would like to see the state develop a wetland protection permitting program as well as a NPDES/surface water permitting program.

Effect on Tribal Nations. Questions and concerns related to the effects of program implementation on Tribal nations had 2 focused responses. Another tribal consideration is mentioned once more in responses that fall into the “all” category or the “other” subcategories for program implementation. Examples of direct responses that share Tribal concerns and questions include:

- How will this program benefit, contribute, and protect tribes and surface waters on tribal land?
- I am concerned as to how this will affect the tribal nations in New Mexico.
- United States tribal environmental programs have been historically funded through an EPA-grant funded process.

Other. In addition to the categories mentioned above related to program implementation, approximately 24 respondents also raised other questions and concerns. Examples of direct responses that share other questions and concerns include:

- How does it compare to other state-led water quality permit program for surface waters?
- How can this be insulated from potential future political swings at the state level that the federal level now experiences?
- My concern would be political influence entering the permitting process.
- Corrupt officials and extremist political views irrationally opposed to processes that ensure clean air and water.

Program Development Questions and Concerns

Reporting and Tracking Systems. One response under program development focuses on reporting and tracking system concerns, with the issue raised another time under the “all” and “other” subcategories for program development, as well as the overall Question 4 “combination/all” category. Responses highlight questions and concerns around developing and transitioning to systems for submitting permit applications and data. Examples of direct responses that share reporting and tracking system concerns and questions include:

- We need to ensure we have a reporting system that makes it easy for permittees to provide data to NMED.
- Does the state have a solution for notice submittals (i.e. NetCGP Echo eNOI Lookup)?

Timing and Schedule. There are 13 responses under program development that focus on timing and schedule concerns and questions, with the issue raised in 6 responses under the “all” and “other” subcategories for program development, as well as the overall Question 4 “combination/all” category. Responses highlight questions and concerns around the time needed to develop the program and begin implementation. Examples of direct responses that share timing concerns and questions include:

- We understand that setting up such a program will take time, as well as significant resource and capacity investments, but want to urge the agency to move forward as quickly as possible due to the urgency that the Sackett decision has created.
- My biggest concern is that it might take 7-10 years to get off the ground. We need it in 7 weeks not 7 years!
- Can our highest priority and at-risk waters be protected first given what is likely an extended timeline for full implementation? How can this timeline be as short as possible?
- The length of time it will take for the State to develop and obtain approval of a State permitting program.
- Concerns include timeline for implementing a state-led NPDES program.
- We are very concerned about the lead time it will take to put a state program in place.
- The timeline would need to be realistic because there is so much to accomplish, including acquiring funding, hiring staff, completing the research, developing the State regulations, proposing how NM would draft permits, all before the primacy proposal package is submitted for EPA approval.

Stakeholder Involvement. There are 18 responses under program development that focus on questions and concerns pertaining to stakeholder involvement in program development, with the issue raised in 5 responses under the “all” and “other” subcategories for program development, as well as the overall Question 4 “combination/all” category. Responses highlight questions and concerns around opportunities for input on aspects of the program and who specifically should have the opportunity to provide input. Examples of direct responses that share stakeholder involvement concerns and questions include:

- When creating the program permittees with different permit types should have the opportunity to provide input. Many times it feels like the NMED staff are disconnected from what our systems do and how they work and include language in permits that are not applicable to the facility.
- How will NMED go about establishing permit fees (other than going to the WQCC)? Will there be stakeholder meetings? If so will they be used to achieve some kind of consensus?
- Development and implementation of this program should address this concern by taking into account factors such as differences between populated areas and more rural areas difference in laws that apply to various portions of the state as a result of water rights related matters (or other matters that indirectly influence water quality matters), and actively seek to include input from areas of the state that are not focused in the metro region.
- I believe the regulations should be written from a team made up of an equal amount of public sector folks and private sector folks with the necessary knowledge of water quality. The team should have an odd number of folks with one additional private sector person.
- Many agencies across the State have been working with EPA on the permit process and have some great knowledge and ideas on NPDES. My suggestion would be that the state tap into this knowledge and use it when developing a permit program appropriate for NM. My concern is that the permit program be developed without input. Involve people early and you will have a much better outcome in the process.
- I would like to see or participate in more public discussion, include full funding background of lobbying groups.
- There absolutely must be a community input component included. This should also include significant outreach to make sure communities impacted by decisions are aware of the proposed decision and have ample time to review and share thoughts. All attempts should be made to reduce barriers for communities to participate in the process (language, technological accessibility, timelines, locations of meetings, etc).
- In our case, EBID is an entity governed by both State and Federal law, with requirements under each that sometimes come into conflict. To avoid this, the State should seek comments from large water providers, most of whom have similar 'large scale' issues that must be adequately thought through to avoid unintended negative impacts to local communities.

Other. In addition to the categories mentioned above related to program development, approximately 8 respondents also raised other questions and concerns. These questions and concerns address looking to other states for program examples and considering different management approaches. Examples of direct responses that share other program development related questions and concerns include:

- I think time and effort would need to be put in to create a program that is effective but doesn't put too much of a burden (financially or bureaucratically) on small scale landowners.
- I would just wonder which state we might use as an example as we move forward. Who is the best example to use?
- Using a regional watershed and ecosystem approach will be critically important in the process of developing/implementing the standards and program.
- Water Management Districts should be created and governing boards must be filled with non-political responsible Governing Board Members.

Regulatory Issues Questions and Concerns

Defining waters of the U.S. and waters of the state. Approximately 14 responses under regulatory issues focus on concerns and questions related to defining waters of the U.S. and the state, with these concerns and questions raised another 8 times in responses under the overall Question 4 “combination/all” category. Responses highlight questions and concerns around the Supreme Court’s Sackett v. EPA decision, loss of protections for many of New Mexico’s waters, and what a state-led permitting program would cover. Examples of direct responses that share concerns and questions about defining waters of the U.S. and the state include:

- The back and forth over definitions of the waters of the US and changes in federal protections makes it clear that decisions on protecting New Mexico's waterways must stay here in New Mexico.
- Will this permit program be tied to the new WOTUS rule on what is jurisdictional?
- My concern is loss of protections at the federal level. A state-led permitting program would provide regulatory certainty and allow the state to control its own permitting and ensure our waterways are fully protected without relying on supportive federal administrations.
- A primary concern is how such a program would protect surface waters and wetlands from dredge and fill impacts in the context of the recent Sackett decision by the U.S. Supreme Court.
- The state needs to act quickly to set up a permitting program to protect waters of the state that have lost federal protections.
- I also have questions about protecting our state's wetlands and rivers and streams from dredge and fill impacts. I would like to see the state develop a wetland protection permitting program as well as a NPDES/surface water permitting program.
- ...that it won't be comprehensive enough to include all waters- including perennial and intermittent.

Water quality standards. One response under regulatory issues focuses on concerns and questions related to water quality standards. Another response raises the issue of standards in the overall Question 4 “combination/all” category. The direct responses that share these concerns include:

- Please do a really good job at setting quality standards and by relentlessly monitoring compliance.

- That the thinking will be about "beneficial use" only...that means ag and the days of little family farm are over.

Differences between federal and state laws. Approximately 3 responses under regulatory issues focus on concerns and questions related to differences between federal and state laws, with these concerns and questions raised in 4 responses under the overall Question 4 “combination/all” category. Responses highlight questions and concerns around comparing federal and state regulations, duplicating federal regulation at the state level, and state regulatory improvements. Examples of direct responses that share concerns and questions about defining waters of the U.S. and the state include:

- How do our regulations compare with the feds?
- How much will it fit in and defer to current federal laws. What if those laws change?
- My only concern is whether the standards for clean water and discharge will differ from those of the EPA, and if so, will the standards be improved?
- Will the state-led water quality permit program follow the federal Clean Water Act processes? Or will amendments be made to the NM Water Quality Act?
- ...the possibility of the State being more lenient with water quality than federal policy allows.

Other. In addition to the categories mentioned above related to regulatory issues, 3 respondents also raised other questions and concerns. Another regulatory issue response also appeared in the “Combination/All” category for Question 4 that does not fit into other subcategories. Examples of direct responses that share these other questions and concerns include:

- My concern is that since the water in New Mexico is ephemeral and scarce that we need strong rapid enforcement of clear and definitive rules.
- Regulatory uncertainty where clarity is needed.
- Would like to be sure that the statewide permitting process does not get duplicated by or overridden by either county or federal processes.
- How will the interface between the NM WQA and the NM Hazardous Waste Act be strengthened? Many industrial facilities that handle, treat, store, and dispose of hazardous waste are regulated by the NM WQA and not the NM HWA, e.g., LANL.

Combination/All Questions and Concerns

Approximately 21 responses to Question 4 combine several questions and concerns. These responses are teased out and mentioned under the relevant categories.

Water Quality/Water Quantity Questions and Concerns

Pollutants. There are 6 responses under water quality/water quantity that focus on concerns and questions related to pollutants, with these concerns and questions raised another time in responses under the overall Question 4 “combination/all” category. Responses highlight questions and concerns about levels of pollutants, around comparing federal and state regulations, duplicating federal regulation

at the state level, and state regulatory improvements. Examples of direct responses that share concerns and questions about pollutants include:

- I am concerned about the possibility that New Mexico's surface water quality permits could allow more pollution to enter our state waterways, further degrading water quality in certain basins and throughout the state as a whole.
- If you were denying permits to oil and gas and industrial discharge there seems like there should be no need for this new ""added cost." STOP PERMITTING THE INDUSTRIES THAT ARE ALREADY POISONING SURFACE AND GROUND WATERS.
- Water quality from point and nonpoint source areas.
- My concern is that protection for NM waters will not be adequate, will not have significant enforcement and will allow contamination of our water.

Wildlife/Habitat. There are 2 responses under water quality/water quantity that focus on concerns and questions related to wildlife and habitat, with these concerns and questions raised in 4 responses under the “Many/All” category for the Water Quality/Water Quantity subcategory, as well as the overall Question 4 “combination/all” category. Responses highlight questions and concerns about protection of wildlife and habitat that depend on ephemeral waters. Examples of direct responses that share concerns and questions about wildlife and habitat include:

- I hope NMED will act to protect our native flora and fauna that depend on ephemeral waters.
- It is estimated that over half of the vertebrate species known to occur in the state utilize aquatic and riparian habitats at some point over the course of their life cycle and this number jumps to over 80% when looking at only "sensitive and specially classified" vertebrate species we must ensure these important habitats are protected.
- Decisions from a shared pool of experts in state groundwater quality, expectations from agriculture and developers, with primary objective to protect stream/river flow and its sustainability for fish, habitat, trees.
- Streams must be allowed to have rights to protect habitat and fishery preserves.
- Checks and balances to ensure that wildlife impact is carefully considered in decision making.

Water Supply/Quantity. There are 5 responses under water quality/water quantity that focus on concerns and questions related to water supply/quantity. Examples of direct responses that share concerns and questions about water quantity/supply include:

- Buy-out of certain waters rights due to privatization for profit.
- Clean drinking water for communities dependent on surface water.
- Our water is a scarce resource more valuable than fossil fuels. It should not be wasted on extraction practices and priorities.
- Water conservation is my concern.
- Water is not being used efficiently (i.e., wastefully). The deep-water wells being drilled to compensate are very concerning.

Climate change. There is 1 response under water quality/water quantity that focuses on concerns and questions related to climate change, with these concerns and questions raised another time under the overall Question 4 “combination/all” category. Examples of direct responses that share climate change concerns and questions include:

- That in establishing the program it be future oriented, especially in light of climate change concerns.
- How can this be used as an element of a plan to mitigate the impact of climate change?

Other. There are 5 responses under water quality/water quantity that focus on other concerns and questions related to water quality/quantity. Examples of direct responses that share these other concerns and questions include:

- My main concern is that control of our water remains in public, not private, hands. We must assure that our water is protected and preserved.
- Need to be more aware of needs of water both residential and recreational.
- Uncontrolled growth and water unsustainability.
- Will there be support and guidance for cleaning water? My family's water has been severely impacted by the fires.
- That there is continuity and water quality and quantity are the primary focus.

Local Knowledge/Control

Permit Expertise. There are 3 responses under local knowledge/control that focus on concerns related to New Mexico’s waters and conditions, with these concerns and questions raised another time under the overall Question 4 “combination/all” category. Examples of direct responses that share concerns and questions about New Mexico’s waters and conditions include:

- New Mexican's Lives depend on our waters. The Fed Clean Water Act can change from federal administration to administration which results in allowing harms to our watersheds, rivers, streams and acequias - and therefore harms the Peoples and the ecosystem we depend on to Live. The health of our state requires strong equitable protections for our waters. A [s]tate-led water quality permit program will help establish clean water Rights decisions to be made by local and Indigenous peoples.
- There needs to be protections on our surface waters and NM stakeholders are in good position to take over these responsibilities.
- I know that we need a state-led water quality permit program and I have no concerns about moving forward with one.

New Mexico Waters and Conditions. There are 2 responses under local knowledge/control that focus on concerns related to New Mexico’s waters and conditions, with these concerns and questions raised another time under the overall Question 4 “combination/all” category. Examples of direct responses that share concerns and questions about New Mexico’s waters and conditions include:

- The Feds have shown thru their ignorance of proscribed burns that they have no knowledge of local conditions.
- It's long been clear that we need state regulation and enforcement. New Mexicans know our waters best.

Other. There are 2 responses under local knowledge/control that share other questions and concerns beyond the subcategories. Examples of direct responses that share other questions and concerns focused on local knowledge/control include:

- The typical concerns of potential favoritism or bribery for permits that comes with local control.
- Would this make it more difficult for the average rural New Mexican to have access to subsistence use of surface waters?

Needs More Information

There are 7 responses to Question 4 that fall into the needs more information category. Three of these responses share questions or concerns related to needing more information about the process, costs, scope, and purpose of a state-led water quality permitting program. The responses with specific questions and concerns related to the need for additional information include:

- I'd love to get onboard with a water quality permit program, but I don't know what's entailed. I don't know who its target audience is, nor what requirements must be met to obtain a permit. I'd also like to know the cost, and if there is one, how those funds will be spent. I also don't know who would be affected by not qualifying for a permit. And since I don't have enough information, I'm not able to assess if there would be any unintended consequences.
- What is the purpose of this program? How do they intend to implement it? Who is going to be required to have a permit? What are the costs associated with the permit program?
- What is the purpose, at what cost, for whose benefit? More regulation and bureaucracy is not a good thing, from my perspective.

Respondents by surface water quality permit

Question 6 of the survey asked: *Do you currently have a surface water quality permit, often referred to as an NPDES permit?*

To answer Question 6, respondents could choose from three responses: yes, no, or I don't know. Of the 416 respondents, only 27 respondents, or 6%, indicated that they currently have a surface water quality permit (see **Table 3**). A majority (86%) responded that they did not have a surface water quality permit. Nearly three-quarters of respondents with a permit indicated representing a government organization: municipality (37%), local/county government (22.2%), federal facility (7.4%), and state/federal agency (3.7%) (see **Table 4**). The remainder of those with permits represent a variety of industry perspectives (construction, agriculture, mining, livestock/dairy) and the Acequia Association/Irrigation District.

Table 3: Do you currently have a surface water quality permit, often referred to as an NPDES permit? (n=416)

Response Option	Count	Percent
Yes	27	6%
No	358	86%
I don't know	24	6%
no answer	7	2%
Grand Total	416	100%

Table 4: Surface water quality permit holders, by stakeholder type (n=27)

Stakeholder Type	Count	Percent of Total
Acequia Association/Irrigation District	1	3.7%
Agriculture	1	3.7%
Construction	3	11.1%
Federal Facility	2	7.4%
Interested state resident	1	3.7%
Livestock/Dairy	1	3.7%
Local/County Government	6	22.2%
Mining	1	3.7%
Municipality	10	37.0%
State/Federal Agency	1	3.7%
Grand Total	27	100%

Communication preferences

Question 7 of the survey asked: *How would you like to receive updates and information?*

Respondents also indicated their preferred methods for receiving updates and information related to state-led water quality permit programs for surface waters, with many respondents preferring electronic communications, such as emails from NMED's listserv (65.1%) and updates on NMED's website (38.5%) (see **Figure 3**). Virtual meetings were selected by nearly one-third of respondents, while only 12.5% selected updates on social media.

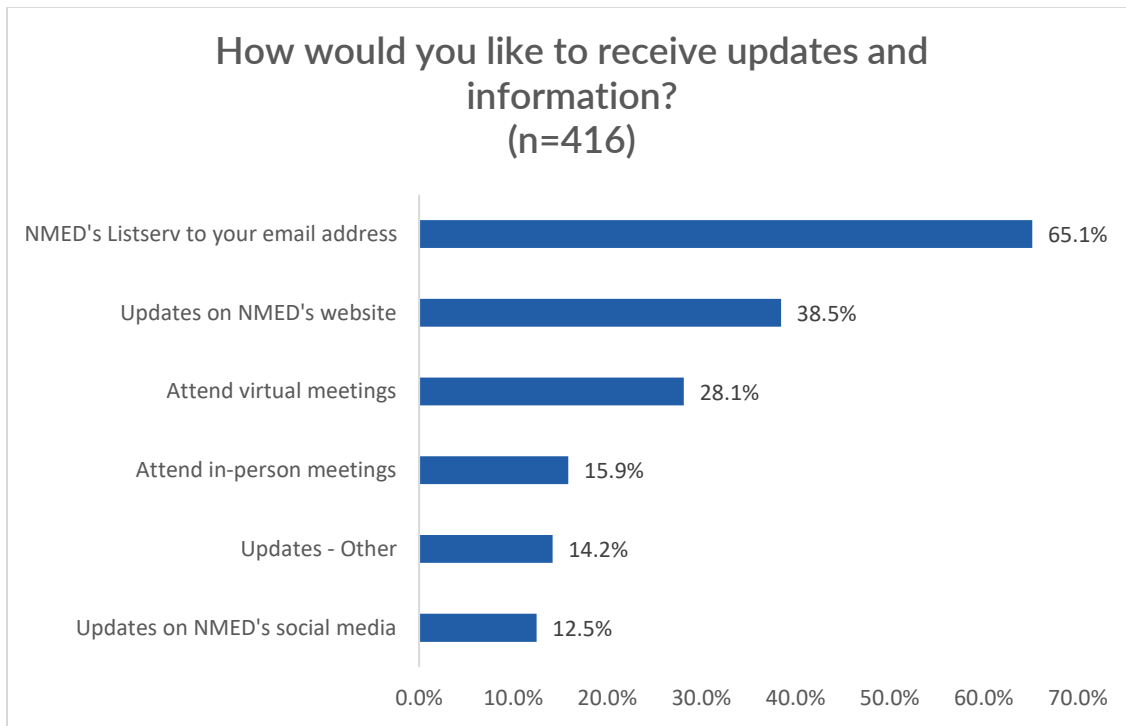


Figure 3. Preference for updates and information (n=416)

Conclusions and Next Steps

Most survey respondents identify as interested state residents and are very supportive of a state-led water quality permitting program. However, very few of the 416 survey respondents represent currently permitted entities who are likely to be directly affected by a state-led water quality permitting program. The rationale for levels of support varies by type of stakeholder group, but concerns about water quality/quantity, local knowledge/control, and regulatory issues appear frequently in responses for those who are very supportive of a state-led permitting program. For stakeholder groups with very unsupportive respondents, the rationale frequently focuses on program implementation and regulatory issues. Many survey respondents had questions and concerns related to program implementation. This indicates that stakeholders will want information related to program implementation decisions from NMED as they become available.

The survey responses indicate a few key next steps for NMED to consider. Based on the lower numbers of permitted respondents, NMED should take additional steps to engage the universe of permitted entities to better understand their specific perspectives, concerns, and questions related to a state-led water quality permitting program. Based on the high number of questions and concerns related to program implementation and program development, NMED should continue to provide information related to these questions and concerns using the NMED listserv, website, and other virtual engagement activities. NMED can refer to the questions and concerns raised in survey responses as Surface Water Quality Bureau staff provide regular updates to the [NMED Surface Water Quality Permitting Program Initiative website](#), create informational resources such as fact sheets and a Frequently Asked Questions

(FAQ) document, and plan virtual engagement such as webinar updates when there is new program information to share.

Appendix A: Survey Questions

1. How supportive are you of NMED taking the steps needed to develop a state-led water quality permit program for surface waters in New Mexico?

- Very supportive
- Somewhat supportive
- Slightly supportive
- Neither supportive nor unsupportive
- Slightly unsupportive
- Somewhat unsupportive
- Very unsupportive
- Don't have enough information for an opinion.

2. Please share some thoughts on why you answered Question 1 as you did.

3. From your perspective, what are the top three benefits of having a state-led water quality permit program for New Mexico surface waters?

- Local knowledge of NM's facilities and waters
- Protection for all important surface waters
- Streamlined permitting process
- State-led compliance assistance and enforcement
- Not dependent on federal policies
- Other

4. What concerns or questions do you have about a state-led water quality permit program for New Mexico's surface waters?

5. What is the perspective you represent? (Pick the option that best characterizes your interest related to state water quality permits for surface water.)

Municipality

- Local/County Government
- Tribe/Pueblo/Nation
- Soil & Water Conservation District
- Industry
- Mining
- Oil & Gas

- Energy Utility & Transmission
- Federal Facility
- State/Federal Agency
- Construction
- Agriculture
- Livestock/Dairy
- Environmental organization
- Outdoor recreation
- Acequia Association/Irrigation District
- Interested state resident
- Other

6. Do you currently have a surface water quality permit, often referred to as an NPDES permit?

- Yes
- I don't know
- No

7. How would you like to receive updates and information? (Check all that apply.)

- NMED's Listserv to your email address
- Attend virtual meetings
- Attend in-person meetings
- Updates on NMED's website
- Updates on NMED's social media
- Other suggestions

Appendix B: Comment Codes

Question 2 Comment Codes

Q2 Main Comment Category

1. Local knowledge/control
2. Program implementation
3. Water quality/quantity
4. Regulatory issues
5. Mentions all or combo 1-4
6. Needs more information

Q2 Comment Subcategory

- 1a. Permit expertise
- 1b. NM waters/conditions
- 1c. All
- 1d. Other
- 2a. Staffing levels and/or training
- 2b. Responsiveness
- 2c. Inspections/Compliance/Enforcement
- 2d. Program funding/costs
- 2e. Permit development/issuance
- 2f. Permit fees/fines
- 2g. All
- 2h. Other
- 3a. Pollutants
- 3b. Wildlife/habitat
- 3c. Water supply/quantity
- 3d. Quality of life
- 3e. Climate change
- 3f. All
- 3g. Other
- 4a. Waters of the US/Sackett decision
- 4b. Defining waters of the state
- 4c. Water quality standards
- 4d. Differences in federal v. state stringency
- 4e. All
- 4f. Other

Question 4 Comment Codes

Q4 Main Comment Category

1. Local knowledge/control
2. Program implementation
3. Water quality/quantity
4. Regulatory issues
5. Program Development/Transition
6. Mentions all or combo 1-5
7. Needs more information

Q4 Comment Subcategory

- 1a. Permit expertise
- 1b. NM waters/conditions
- 1c. Many/All
- 1d. Other
- 2a. Staffing levels and/or training
- 2b. Responsiveness
- 2c. Inspections/Compliance/Enforcement
- 2d. Program funding/costs
- 2e. Permit development/issuance
- 2f. Permit fees/fines
- 2g. Monitoring
- 2h. Oversight
- 2i. Transparency

- 2j. Efficiency
- 2k. Outreach/compliance assistance
- 2l. Permittee-specific concerns
- 2m. Scope of permit coverage
- 2n. Effect on tribal nations
- 2o. Many/All
- 2p. Other
- 3a. Pollutants
- 3b. Wildlife/habitat
- 3c. Water supply/quantity
- 3d. Quality of life
- 3e. Climate change
- 3f. Many/All
- 3g. Other
- 4a. Waters of the US/Sackett decision
- 4b. Defining waters of the state
- 4c. Water quality standards
- 4d. Differences in federal v. state stringency
- 4e. Many/All
- 4f. Other
- 5a. Reporting/Tracking systems
- 5b. Timing/Timeframe/Schedule
- 5c. Stakeholder Involvement/Transparency
- 5d. Many/All
- 5e. Other