

SURFACE WATER ADVISORY PANEL

PROCESS GUIDE

Fall 2024

Convened by the
New Mexico Environment Department (NMED)
Surface Water Quality Bureau

NMED CONTACT INFORMATION			
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PARTICIPATING AGENCIES			
Energy, Minerals, and Natural Resources Department - Oil Conservation Division (OCD) U.S. Army Corps of Engineers/Albuquerque District U.S. Environmental Protection Agency/Region 6			

WELCOME

Thank you for volunteering to provide your expertise and time to serve on the Surface Water Advisory Panel (SWAP). Governor Michelle Lujan Grisham, in the [50-Year Water Action Plan](#), and the State Legislature have directed the New Mexico Environment Department (NMED) to develop a state-led discharge permitting program to protect the water quality of the state's surface waters. The program has two components:

1. delegation to implement the existing federal National Pollutant Discharge Elimination System (NPDES) program that controls the discharge of pollutants into Waters of the United States covered by the federal Clean Water Act; and
2. a new state permitting program to fill the gaps left by the U.S. Supreme Court's decision in *Sackett v. EPA* and control the discharge of pollutants, including dredged and fill materials, into surface waters of the state, under the authority of the New Mexico Water Quality Act.

The SWAP process will provide technical information, practical considerations, and policy perspectives relevant to adopting and implementing the permitting program. The process will inform NMED's development of legislation and rules for consideration by the Water Quality Control Commission.

OVERVIEW

NMED has identified four phases of program development and implementation:

- Phase I** Conduct outreach, develop program outline, adopt statute and rules, and secure a funding strategy.
- Phase II** Develop database, guidance, standard operating procedures, and templates.
- Phase III** Recruit, hire, and train staff.
- Phase IV** Implement state permitting program beginning in 2027.

The SWAP process is part of Phase I.

The SWAP meetings will take place prior to the formal rulemaking process.

The SWAP is not a consensus-seeking process. SWAP members are encouraged to share differing technical, practical, and policy information and perspectives. Please note that the SWAP process is NOT a forum for discussing specific permitting or enforcement actions.

NMED will post the following information for public review (<https://www.env.nm.gov/surface-water-quality/swap/>):

- List of SWAP members and alternates
- Meeting agendas
- Attendance records
- Presentations by NMED and invited speakers
- Publications and written input provided by the SWAP members

The SWAP meetings are not public and will not be recorded or allowed to be recorded. Only SWAP members and alternates, persons who have been invited to give presentations, and representatives of NMED and participating agencies are allowed to attend the meetings.

MEMBERS

A list of SWAP members and designated alternates is attached.

MEETINGS

The meetings will take place on August 19, September 11, and October 1, 2, 15, and 25. Two additional meetings will be held, if needed, on November 13 and 14. Preliminary agendas (subject to change) are attached. Meetings will be held at the NMED District 1 Office, 121 Tijeras Ave. NE, Suite 1000, Albuquerque 87102.

MEETING PROCESS

- a. NMED Presentation. At the first meeting NMED will present introductory information and questions for discussion. At the end of each meeting, NMED will introduce the next meeting's topic with a presentation and a few questions to stimulate ideas and discussion at the next meeting. The majority of the time in the meetings will be reserved for discussion and input from SWAP members.
- b. Member Input. SWAP members may request to make a power point presentation on a topic or to invite another person to make such a presentation on their behalf. NMED will work with SWAP members to arrange member presentations. Presenters can present from a remote location. Slides must be submitted to NMED no later than 3 working days before the meeting. NMED invites the submittal of publications, research results, and other relevant information. NMED also welcomes written input from members in response to the questions and topics addressed at the meetings.
- c. Member Presentations. Please include the following slides in each presentation:
 - Slide 1 presenter, topic, date
 - Slide 2 key points
 - Slide 3 citations for supporting data and information, including hyperlinks if available
- d. Attendance. To the maximum extent practicable, SWAP members are expected to attend meetings in-person. A designated alternate may attend meetings if the SWAP member cannot attend in-person. When a SWAP member cannot attend in-person, the SWAP member should prepare the designated alternate to participate in the meeting.
- e. Remote Attendance. Remote access to the meetings will be provided only for SWAP members, alternates, invited presenters, and representatives of NMED and participating agencies. Each person attending remotely must modify their avatar so that it identifies their name and phone number to allow NMED to confirm who is in the meeting. Meetings will not be delayed or adjourned for audio or technical difficulties. In-person participants are requested to keep side discussions to a minimum for the benefit of those observing remotely.
- f. Chatham House Rule. As a condition of participation in the SWAP process, SWAP members, alternates, presenters, and representatives of NMED and participating agencies agree to comply with the

Chatham House Rule during and after the SWAP process. The Chatham House Rule applies to all written and oral communications, including social media, regarding the SWAP:

When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.

g. Final Report. NMED plans to provide a written report that describes the SWAP process, summarizes the input received, and includes all written input. NMED will request SWAP review and comment on the draft version of the report.

Surface Water Advisory Panel (SWAP) Members and Alternates

	Name	Contact	Affiliation
1	Aaron Chavez	achavez@sjwc.org	San Juan Water Commission
2	Allen Haden	allen@naturalchanneldesign.com	Natural Channel Design Engineering, Inc.
2A	Cathy Scudieri	cathy@naturalchanneldesign.com	Natural Channel Design Engineering, Inc.
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5	Corey Webster	corey.webster@dgf.nm.gov	NM Department of Game and Fish
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6A	Merat Zarreii	mzarreii@abcwua.org	ABCWUA
7	David Gatterman	dgatterman@sscafca.com	Sandoval County Arroyo Flood Control Authority.
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8	Debbie Hughes	conserve@nmacd.org	NM Association of Conservation Districts
8A	Rebecca Dow	Rebecca@dowform.com	NM Association of Conservation Districts
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10	Joey Martin	joeymartin@dfamilk.com	Dairy Farmers of America
11	John Kay	jtkey@sandia.gov	Sandia National Laboratory - National Technology & Engineering Solutions of Sandia, LLC (NTESS)
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13	Melanie Lawton	melanie@nmhba.org	New Mexico Home Builders Association
14	Lial Tischler	lial@tkee.com	NM Oil and Gas Association
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20	Sarah Ganley	sganley@bhinc.com	New Mexico Chamber of Commerce
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27	Vidal Gonzales	vidal@lasacequias.org	New Mexico Acequia Association
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Surface Water Advisory Panel (SWAP) Meeting Agendas

Meeting 1 – August 19

Introduction

Morning

- 9:00 – 10:00 Introductions
Name, affiliation, interest in program
- 10:00 – 10:30 **Presentation: Overview of SWAP Purpose, Process, and Meeting Agendas**
- 10:30 – 10:45: Break
- 10:45 – 12:00 **Presentations: Surface Water Quality Discharge Permitting in New Mexico**
1. Context: Surface Water Quality Protections and Authority
 2. Clean Water Act (CWA) Section 402 National Pollutant Discharge Elimination System (NPDES) Program Regulating Point Source Discharges
 3. CWA Section 404 Program Regulating Discharges of Dredged or Fill Material

Afternoon

- 1:15 – 1:30 **Presentation: SWAP Focus: Permitting Options to Protect Surface Waters of the State**
- 1:30 – 3:00 **Member Discussion:**
- What is working under the current permitting programs that should be retained for the state permitting program? What could be improved or adapted to better suit New Mexico under a state permitting program?
 - What protections or considerations would you like to add that do not exist in current permitting programs that would help ensure clean water for future generations?
 - What do you see as a way to positively protect and restore New Mexico's waters through this process?
 - What do you see as a way to positively affect water users and permittees through this process?
 - What are your biggest concerns about NPDES delegation and the creation of a state permitting program?
- 3:00 -3:15 Break
- 3:15 – 3:45 **Presentation: NPDES Delegation**
- 3:45 – 4:00 Wrap up

Meeting 2 – September 11

NMPDES Statute and Rule / Delegation / General Principles for State Permitting Program

Morning

- 9:00 – 9:20 Introductory Comments
- 9:20 – 9:50 **Presentation: Draft New Mexico Pollutant Discharge Elimination System (NMPDES) Statute and Rule**
- 9:50 - 12:00 (with break)
- Member Discussion: NPDES Delegation**
- What do you see as the benefits, disadvantages, and challenges of obtaining NPDES delegation?

TENTATIVE AND SUBJECT TO CHANGE

Afternoon

- 1:15 – 1:30 **Presentation:** General Principles for Developing a State Permitting Program under the Water Quality Act (WQA) to Protect Surface Water Quality
- 1:30 – 2:45 **Member Discussion:** What are your thoughts on the general principles suggested – do you have others to suggest?
- 2:45 – 3:00 Break
- 3:00 – 3:45 **Presentation:** Introduce Topics for Meetings 3 and 4
- 3:45 – 4:00 Wrap up

Meeting 3 – October 1
State WQA Program - Scope and Process

Morning

- 9:00 – 9:20 Introductory Comments
- 9:20 – 12:00 (with a break)
- Member Presentations and Discussion:** State WQA Program - Scope
What activity needs a permit and which permit is needed?

Afternoon

- 1:15 – 2:30 **Member Discussion:** Feedback on Draft NMPDES Statute and Rule
- 2:30 – 2:45 Break
- 2:30 – 3:45 **Member Presentations and Discussion:** State WQA Program – Process
Notices of Intent, applications, public notice and comment, hearings, administrative and judicial review
- 3:45 – 4:00 Wrap up

Meeting 4 – October 2
State WQA Program – Options for Point Source Discharges

Morning

- 9:00 – 9:20 Introductory Comments
- 9:20 – 12:00 (with a break)
- Member Presentations and Discussion:**
State WQA Program – Options for Point Source Discharges
What aspects of the NPDES framework should be retained, dropped, or adapted for a permitting program to protect state waters (“fill the gap” after *Sackett*)?

Afternoon

- 1:15 – 3:00 (with a break)
- Member Discussion continued**
- 3:00 – 3:15 Break
- 3:15 – 3:45 **Presentation:** Introduce Topic for Meeting 5
- 3:45 – 4:00 Wrap up

TENTATIVE AND SUBJECT TO CHANGE

Meeting 5 – October 15	
State WQA Program – Options for Dredged and Fill Material Discharges	
Morning	
9:00 – 9:20	Introductory Comments
9:20 – 12:00 (with a break)	Member Presentations and Discussion: State WQA Program – Options for Dredged and Fill Material Discharges What aspects of the Section 404 framework should be retained, dropped, or adapted?
Afternoon	
1:15 – 3:00 (with a break)	Member Discussion continued
3:00 – 3:15	Break
3:15 – 3:45	Presentation: Introduce Topics for Meeting 6
3:45 – 4:00	Wrap up
Meeting 6 – October 25	
Program Costs and Funding Options / Draft WQA Amendments	
Morning	
9:00 – 9:20	Introductory Comments
9:20 – 12:00 (with a break)	Member Presentations and Discussion: Program Cost and Funding Options
Afternoon	
1:15 – 2:30	Member Discussion: Draft WQA Amendments
2:30 – 3:45	Placeholder for other topics needing further discussion
3:45 – 4:00	Wrap up
Meeting 7 – November 13	
Reserved for Topics Needing More Discussion	
Meeting 8 – November 14	
Reserved for Topics Needing More Discussion	