

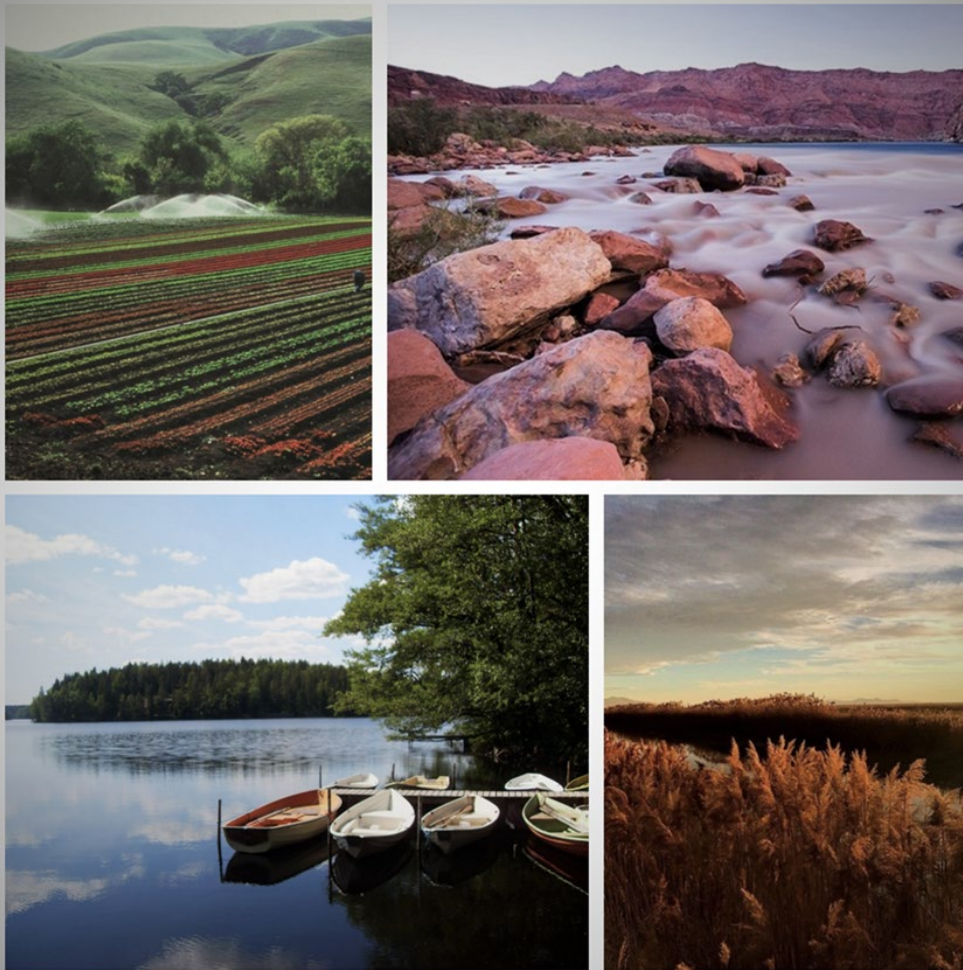


New Mexico Environment Department

Surface Water Quality State Permitting Program
Protecting New Mexico's Streams, Rivers, Lakes,
Wetlands, and Other Surface Waters
August 2024



Surface Water Quality Permitting



- Permitting programs created by the federal Clean Water Act (CWA) protect “*waters of the United States*,” or WOTUS from pollution, but many waters in New Mexico are not considered WOTUS.
- The NM Environment Department does certify that the federal permits comply with state water quality standards.
- New Mexico’s Water Quality Act (WQA) authorizes regulations to prevent water pollution, but the State has not yet adopted permitting regulations to protect “surface waters of the state.”



Background

Why Does New Mexico Need a Surface Water Quality Permitting Program?

New Mexico does not have its own permitting program to protect surface waters.

Two types of federal permits protect water quality, water courses, and wetlands in New Mexico.

- National Pollutant Discharge Elimination System or “NPDES” permits regulate point source discharges of wastewater and stormwater to WOTUS. EPA Region 6 located in Dallas administers the NPDES permit program in New Mexico.
- Section 404 permits regulate activities that discharge dredged or fill material in WOTUS. These permits limit destruction or physical damage to lakes, rivers, wetlands, streams and other waterways. The U.S. Army Corps of Engineers in Albuquerque issues Section 404 permits in New Mexico.

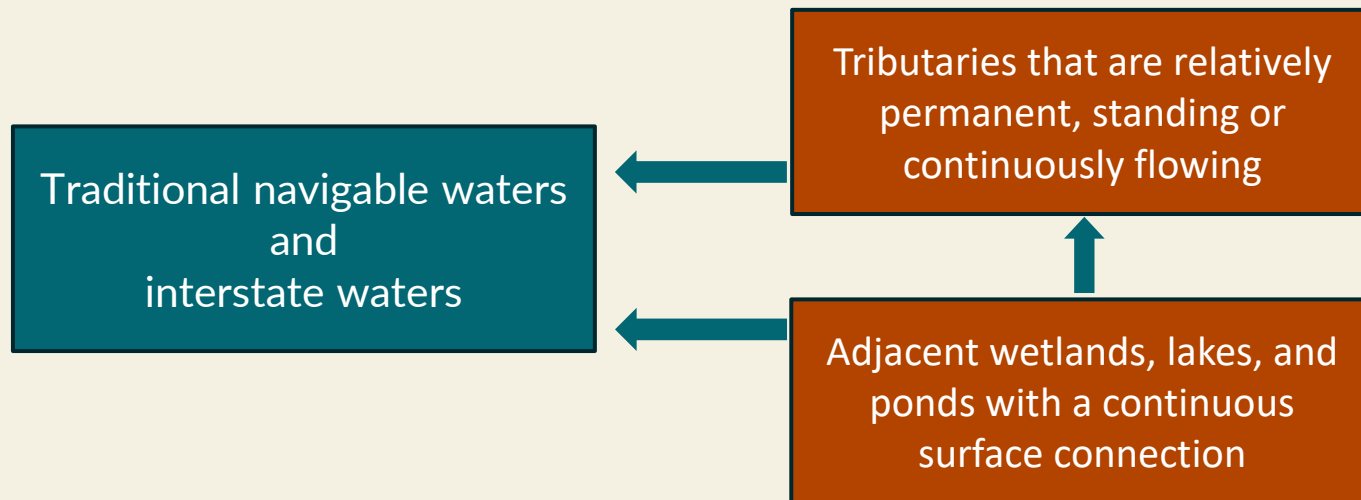
Supreme Court decisions have weakened the federal Clean Water Act.

- The *Sackett v. EPA* in May 2023 is the most recent Supreme Court ruling to scale back which waters are covered by the CWA.



Impact of Sackett Ruling on New Mexico

- In *Sackett v. EPA*, the U.S. Supreme Court held that the CWA applies only to wetlands that are "relatively permanent bodies of water" that "have a continuous surface connection" with a traditional navigable water.
- What's still included in WOTUS, according to the revised federal rule (see 40 CFR 120):

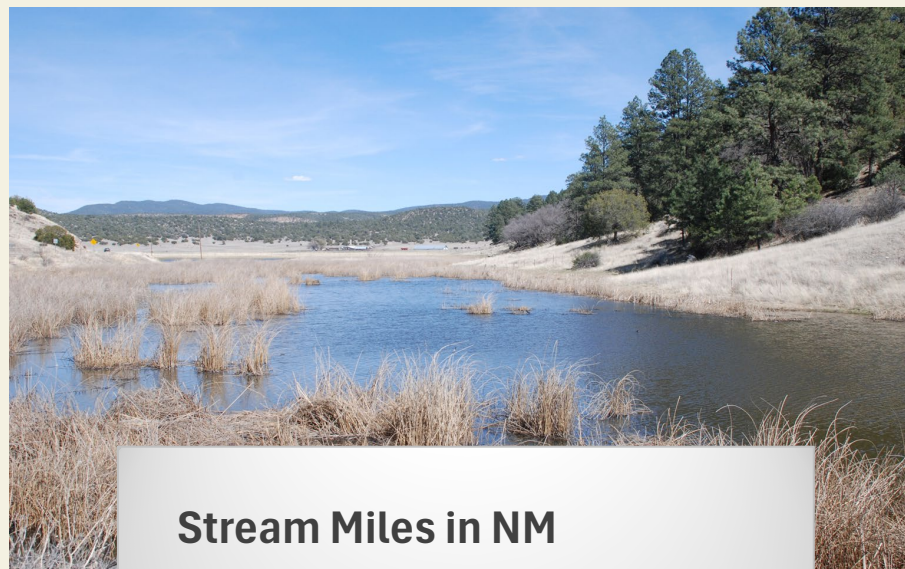




Impact of Sackett on New Mexico

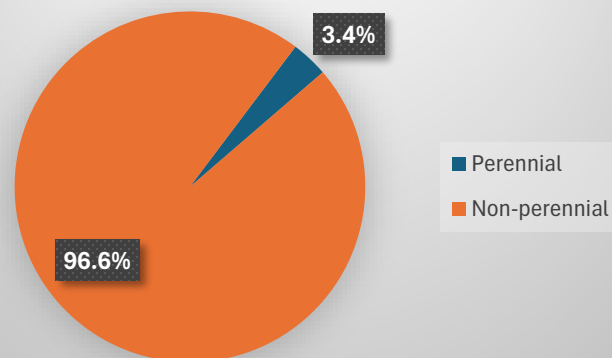
Many of New Mexico's waters are no longer subject to CWA permit requirements.

- ❑ Ephemeral waters that flow in response to rain or snowmelt
- ❑ Wetlands without continuous surface connection, for example, where a dike or road has been built
- ❑ Isolated ponds, lakes, and wetlands, including playas and springs
- ❑ Drier reaches of interrupted streams, where the water goes underground
- ❑ Intermittent waters that flow seasonally could be at risk in future court challenges



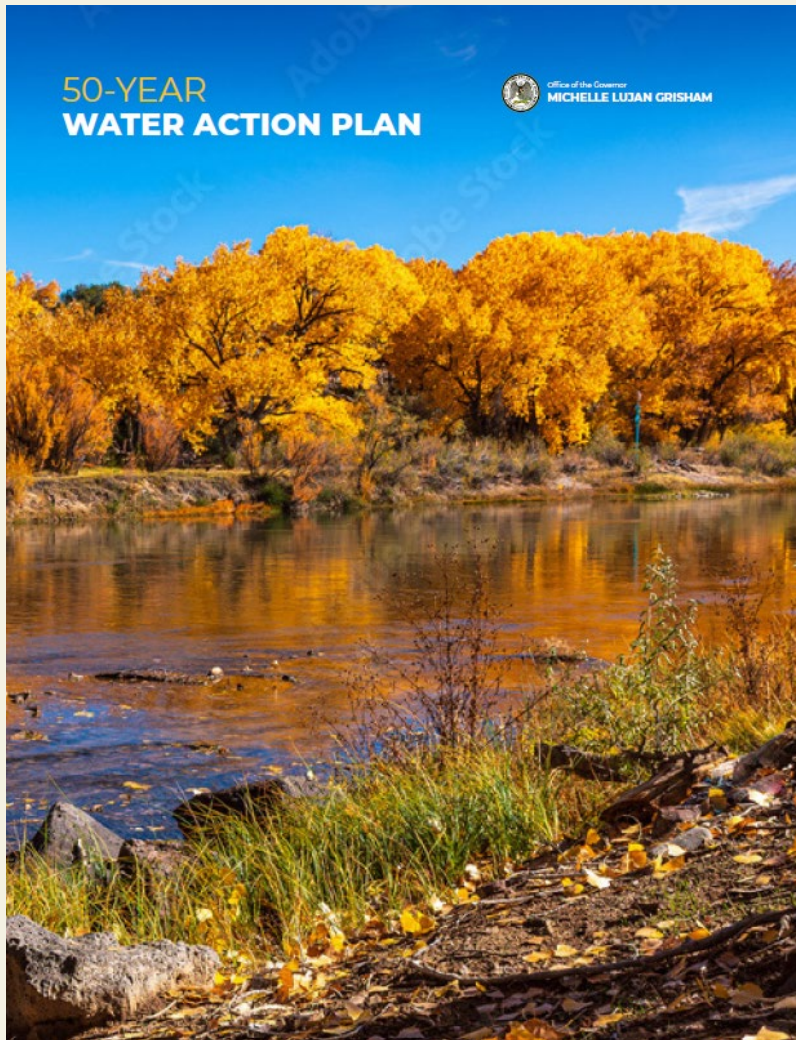
Stream Miles in NM

(Non-Tribal Waters)





State 50-Year Water Action Plan



Action C2:

“Develop and implement a State surface water discharge permitting program to protect watersheds and reduce the amount of pollution entering New Mexico’s rivers, lakes, streams and wetlands ...

... a state program would ensure protection of all waters of the State and the communities and ecosystems that rely on them.”

Immediate Next Steps:

“In 2025, enact legislation to remove any statutory barriers to full program development and assumption of federal program authorization.”



Scope of Proposed Program

"The commission ... may adopt regulations to be administered by the department of environment for surface water discharges."

NM Water Quality Act, Section 74-6-4(Q)

"Commission" refers to the Water Quality Control Commission (WQCC)

- WOTUS (Clean Water Act)
 - ▣ Seek delegation from EPA for the NPDES program for point source discharges
 - ▣ Do not seek authority for the Section 404 program: U.S. Army Corps of Engineers will continue to regulate discharges of dredged and fill materials to WOTUS

- Surface waters of the state (Water Quality Act)
 - ▣ Create a State program to fill the gaps left by Sackett that covers both point source discharges and discharges of dredged and fill material in surface waters of the state
 - ▣ The program will not apply to tribal waters, but NMED will be responsive to tribal concerns



State Permitting Program

Benefits of a state-led permitting program for surface waters

Local knowledge and expertise

Staff on-the-ground in New Mexico

Accountability to the legislature and Governor

Shield against turbulent federal laws and policies

Critical functions of waters that are not WOTUS

Provide water for drinking, irrigation, agriculture and livestock, industry, traditional food sources, and recreation

Buffer against wildfire and flooding

Contribute flow to other surface waters

Recharge aquifers for future use

Support fish, wildlife, and ecosystems



Steps to Program Approval

State Program

- Engage stakeholders.
- Amend the NM Water Quality Act.
- Conduct rulemaking hearing.
- Effective upon rule adoption.
- *Phased implementation.*

NPDES Delegation

- Engage stakeholders.
- Enact NMPDES Delegation Act.
- Conduct rulemaking hearing.
- Prepare and submit program application to EPA.
- Effective upon EPA approval.
- *Phased implementation.*

Successful implementation will require capacity building, which includes hiring and training staff, developing a permitting database, and creating guidance and procedures.



Estimated Costs & Revenue Options



Projected staffing: 35-50 employees

Projected program cost: \$6-9 million per year

EPA does not fund state NPDES programs

Funding/Revenue options:

- Permit fees
- Legislative appropriations (general fund)
- Special set-aside or invested fund
- Combination



Timeline





Contact Us / Learn More

Email: swq.pp@env.nm.gov

SWQB website: www.env.nm.gov/surface-water-quality/spp

Phone: 505-827-2855 | 1-800-219-6157 | Environmental Emergencies: 505-827-9329 (24 hours)

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Surface Water Quality State Permitting Program



Contact us

Ph: 505-827-0187 Find a list of Surface Water Quality staff contacts [here](#).