Executive Summary

Surface Water Advisory Panel (SWAP) Final Report

New Mexico Environment Department



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Executive Summary

The Surface Water Advisory Panel (SWAP), convened by the New Mexico Environment Department (NMED), gathered diverse technical, operational, and policy insights to inform the development of a State-led surface water permitting program. This program is being considered in response to multiple U.S. Supreme Court rulings that have narrowed the scope of federal jurisdiction under the Clean Water Act (CWA), including the most recent ruling in *Sackett v. EPA*. These rulings have left many surface waters in the State unprotected at the federal level. Waters at risk include wetlands, ephemeral streams, and waters that do not flow into interstate rivers (closed basins). By creating a State-specific permitting framework, New Mexico aims to ensure comprehensive protection of these waters while reflecting local ecological conditions, hydrologic realities, and stakeholder priorities.

Role and Scope of SWAP Input

SWAP members represented diverse perspectives and interests within New Mexico:

- Industry: oil and gas, mining, construction, and business sectors.
- Agriculture: acequias, conservation districts, dairies, ranching and farming organizations.
- Environmental groups: conservation and advocacy organizations.
- Tribal government: one Pueblo government provided representatives.
- Local government: water utilities, wastewater and stormwater authorities.
- Water delivery/control: irrigation districts and flood control organizations.
- State and federal agencies.
- Federal facilities: Los Alamos and Sandia National Laboratories.
- Watershed and wetland restoration professionals.

The SWAP did not operate as a decision-making or consensus-seeking body. Instead, it served as a forum for stakeholders to offer ideas, perspectives, and suggestions. These inputs, while not formal recommendations, are helping to guide legislative development, program structure, and implementation strategies. This report synthesizes the input offered and highlights key points raised by SWAP members during the meetings and in optional written submittals (See Appendices D and E). The report does not intend to imply that agreement or consensus was reached on any particular issue.

Key areas of discussion and input included:

- **Regulatory Scope and Clarity**: SWAP members emphasized the importance of defining regulated waters and establishing clear regulatory boundaries to ensure compliance and reduce confusion. Many considered alignment with existing federal programmatic elements and exemptions beneficial, while allowing the State to incorporate arid-region hydrology and operational realities unique to New Mexico. Members supported tools such as GIS-based mapping to delineate jurisdictional boundaries and ensure predictable permitting pathways.
- **Public Engagement and Communication**: SWAP members explored ways to improve public notification and outreach strategies, highlighting the importance of transparent, accessible, and equitable public engagement. Members suggested that multilingual notices, maintaining traditional notification methods (e.g., newspaper ads, postal mail), and employing GIS-based

tools could enhance accessibility, especially for people living in rural and underserved communities. Suggestions also included incorporating environmental justice screening tools, such as EPA's EJScreen, which could help identify vulnerable communities, ensuring their residents receive adequate notice and opportunities to participate in decision-making. The SWAP's input also addressed how agencies and applicants might share responsibility for public notifications. Certain members highlighted the importance of involving key state agencies, tribes, and the public in the early stages of permitting decisions and actions. Permit applicants need requirements for notice and engagement to be clear to avoid uncertainty and minimize litigation risk.

- Sector-Specific Operational Considerations: Input from industries, agriculture, municipalities, and other stakeholders emphasized flexibility to accommodate operational realities, including intermittent and ephemeral flows. Participants suggested that the state's permitting framework address seasonal conditions, regional hydrological variability, and differences in infrastructure capacity while minimizing duplicative requirements where other state programs already regulate certain aspects. Timely action on permits was emphasized by stakeholders representing regulated entities.
- Sustainable Funding: Various SWAP members expressed concern about NMED's capacity to administer the program and considered various funding mechanisms. Suggestions included proportional fee structures to avoid placing undue burdens on smaller entities and alternative funding sources (e.g., expedited permitting fees, reallocated enforcement penalties). Overall, the panel input pointed towards establishing a balance of fairness, affordability, and funding for the resources needed to run an effective, state-administered program with long-term viability.
- **Consistency, Transparency, and Resource Allocation**: The SWAP's input underscored the critical importance of consistency with federal processes, transparent decision-making, and the efficient use of resources. Members indicated that these principles would foster trust and ensure the permitting process does not overburden any single sector or community.
- NPDES Delegation: Some members viewed the potential delegation of NPDES authority as an opportunity to streamline processes and tailor permitting to local conditions. Input included adopting electronic reporting tools, ensuring appropriate staffing and training, and retaining practical components of existing federal processes to simplify compliance and transitions, while adapting others for state needs. Members noted the need for careful attention to transition planning, focusing on phased implementation, building administrative capacity, training staff, and permittees, and using electronic reporting platforms (e.g., EPA's NetDMR) to streamline operations and help mitigate potential disruptions. Some members raised enforcement and citizen suits as important issues. Members provided feedback on draft legislation and rules.
- State Water Quality Act (WQA) Program Development: SWAP input focused on clarifying scope and jurisdiction, retaining or adapting exemptions, addressing emerging contaminants, considering antidegradation protections, and using best practices from other states. The panel's discussion included suggestions for the Notice of Intent process, general permits, mitigation strategies, long-term monitoring, and methods to streamline permitting by leveraging geospatial mapping tools and standardized procedures. Some members emphasized enforcement issues. Members provided feedback on draft WQA amendments.
- **Dredge and Fill Activities**: Input included tiered permitting levels for discharges of dredged and fill material and emphasized basing mitigation requirements for impacts to wetlands and other

aquatic resources on functional ecosystem values rather than acreage alone. Many members supported balancing operational feasibility with robust environmental protections and incorporating avoidance and minimization strategies into project designs.

• **Construction and Stormwater Permitting Specifics**: SWAP input acknowledged the distinct challenges of stormwater permitting in arid environments. Suggested approaches included retaining low erosivity waivers for minimal-impact projects, integrating dust control measures, applying both qualitative and quantitative benchmarks, and selecting appropriate stabilization requirements at construction completion. Participants also recommended improved training programs for inspectors and operators.

Process and Documentation

The SWAP process occurred over multiple meetings, supported by structured agendas, optional written submissions, and resource materials posted online. This approach ensured transparency, encouraged candid dialogue, and allowed participants to share specific insights. The final SWAP report synthesizes these perspectives, providing a detailed record that will inform the next steps in the program's development.

Conclusion

The SWAP's input reflects a spectrum of stakeholder viewpoints to help New Mexico design a surface water quality permitting program that protects scarce surface water resources, meets the State's unique needs, and upholds fairness, clarity, and inclusivity principles. While these contributions do not represent final decisions or formal recommendations, they offer a substantive foundation for NMED as it considers the next steps in its program development