



New Mexico Environment Department

Surface Water Discharge Permitting Primacy

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To Begin...

“Water is the most critical resource issue of our lifetime and our children's lifetime. The health of our waters is the principal measure of how we live on the land.”

Luna Leopold,
First Chief Hydrologist of the USGS



Existing Laws and Programs to Protect Surface Water Quality



- In 1972, the **Clean Water Act (CWA)** made it illegal to discharge pollutants into “*waters of the United States,*” or WOTUS, without a permit.
- **"Waters of the US" refers to surface waters that are protected under the federal Clean Water Act.**
- The National Pollutant Discharge Elimination System (NPDES) program is the federal program that controls water pollution through permit requirements. [CWA §402]
- 47 out of 50 states are currently authorized to implement and administer the federal NPDES program.
- **New Mexico is NOT authorized.**
- New Mexico’s **Water Quality Act** allows the State to issue permits for the discharge of pollutants to waters. [NM Stat § 74-6-5 (2021)]



Why is a permit program needed now?

- **Scope of federal jurisdiction** under the Clean Water Act is limited to “waters of the US”
 - ▣ No clarification to this phrase was given in the enacting language
- **Uncertainty** created by shifting federal politics
 - ▣ Trilogy of Supreme Court cases concerning the meaning of “waters of the US” (1985, 2001, 2006)
 - ▣ **USEPA Rulemakings: 2015** = Obama-era Clean Water Rule; **2020** = Trump-era Navigable Waters Protection Rule; **2021** = Biden-era Proposed Rule to re-codify pre-2015 definition updated to consider Supreme Court
 - ▣ **2022** Supreme Court decides to hear Sackett case



What does this mean for New Mexico?

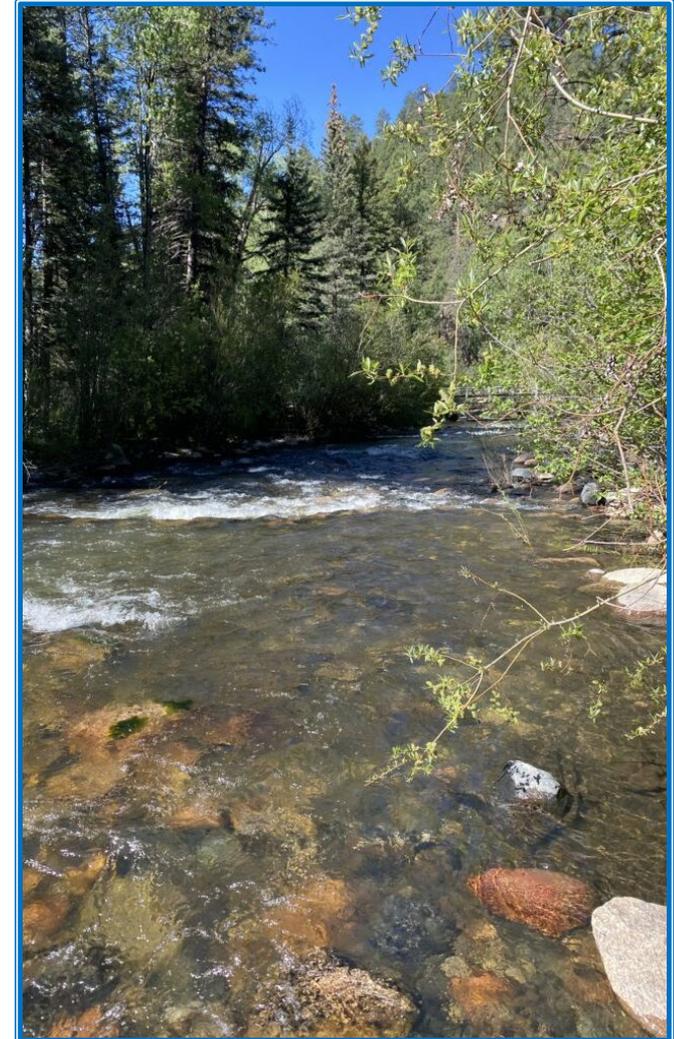
- Will ephemerals and other non-perennial waters be excluded from Clean Water Act protections? TBD.
- "Surface Waters of the State" are more inclusive than "waters of the US"
- Under pre-2015 WOTUS definition, permits were issued for discharges to ephemerals (arroyos) and other non-perennial waters.
- Narrower WOTUS definition will result in ephemerals and other non-perennials being excluded from federal protections – up to 93% of all river and streams in NM.
- Without a surface water quality permitting program, New Mexico cannot fully protect its waters from contamination and degradation.





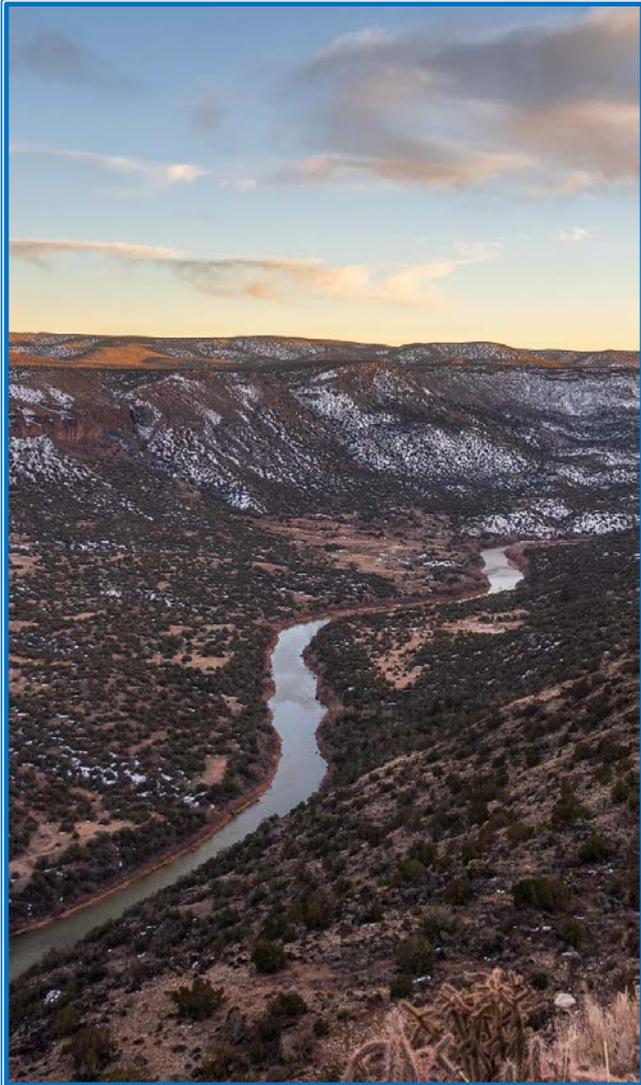
What are the benefits of a State Water Quality Permitting Program?

- ❑ **More certainty** – not dependent on changing definition of "waters of the US"
- ❑ **More certainty** – protects all waters of the state not just "waters of the US"
- ❑ **More certainty** – only one regulating authority
- ❑ Local administration
- ❑ Greater flexibility
- ❑ Fees and penalties stay in NM
- ❑ Better integration with other NMED programs and state agencies





Permitting Program and Necessities



- New Mexico's federal NPDES permitting universe consists of **approximately 3,955 permittees.**
- **A state permitting program to protect "waters of the state" (beyond NPDES) will result in additional permits.**
- NMED must build capacity in (1) permit writing, (2) pretreatment program implementation, (3) compliance monitoring, (4) enforcement, and (5) data management and handling.



Planning and Resources



- 44 FTE = Staffing for a permitting program.
- \$5.9 million per year (in 2021 dollars) = Projected program costs
- Current funding is about 1/10 that amount (~\$550,000).
- At full implementation, NMED would fund the program through a combination of permit application fees and annual fees, and possibly supplement with general fund.

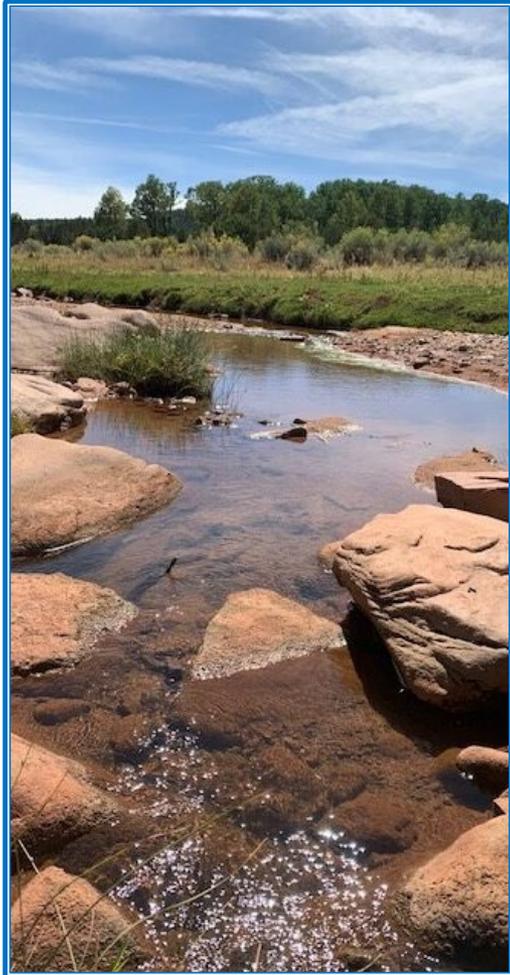


Planning and Resources

- Phase I – Outreach; Regulations and Statutes; Program Outline; Funding Strategy (hire 3 FTE)
- Phase II – Guidance, SOPs, Templates; Rulemaking and Legislation; EPA Application (hire 3 FTE)
- Phase III – Staff Recruitment, Hiring, and Training; State/EPA MOA; Application Package (hire 7 FTE)
- Phase IV – Phased Implementation of Permitting Program over 5 years (hire 24 FTE)
- Timeline to Full Program Implementation: 8-10 years for NMED to obtain full program implementation (municipal, industrial, stormwater, etc.).



Planning and Resources

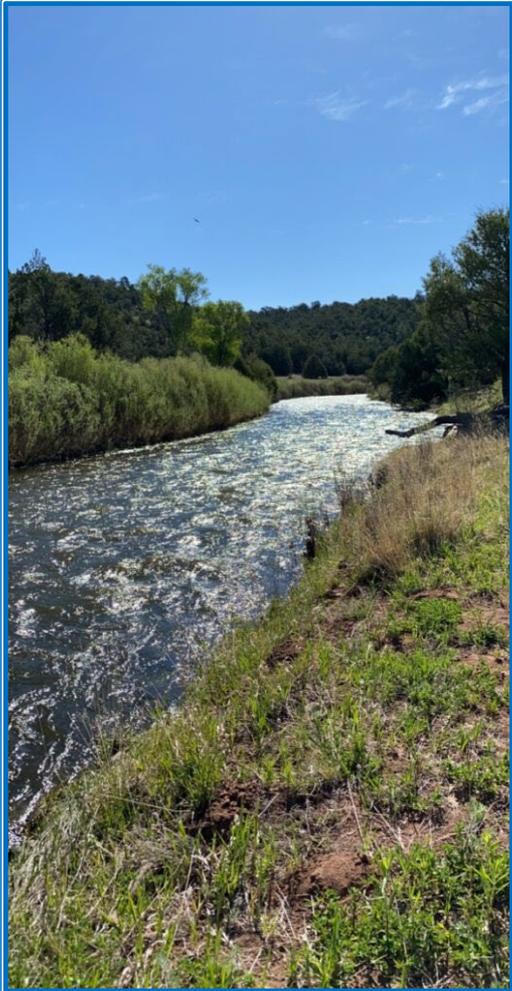


Many activities are necessary to support water programs and ensure a safe and sustainable water supply for all New Mexicans.

- ❑ Planning and goal setting
- ❑ Developing appropriate regulations with robust public involvement
- ❑ Monitoring, sampling, analysis, and assessment
- ❑ Developing mechanisms to protect high quality waters
- ❑ Ensuring permits are protective and enforceable
- ❑ Implementing projects to restore water quality and remediate contamination



Planning and Resources



- In FY2024, fund NMED to develop a state surface water quality permitting program as follows:
 - Fully fund the water protection program at Executive request level
 - Support NMED's targeted non-recurring funding requests for needed staff and contractor support for Phase 1



In Summary...

“You cannot escape the responsibility of tomorrow by evading it today.”

– Abraham Lincoln



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