



New Mexico is rich in valuable waterways that support rivers, multi-generational acequias, wetlands, lakes, and reservoirs critical for agriculture, wildlife habitat, drinking water supplies, and our growing outdoor recreation economy. The 2023 U.S. Supreme Court ruling in *Sackett v. EPA* severely limited the waters protected under the federal government, particularly in New Mexico - where up to 96% of waters no longer have federal protection from polluting sources. New Mexico is also one of only three states that leaves permitting for those few waters still federally protected up to the Environmental Protection Agency. Fortunately, during our 2025 Legislative Session, state lawmakers passed legislation to establish a state-led surface water quality permitting program - a critical first step in safeguarding our New Mexico waters.

Now, the Environment Department is drafting rules to implement the legislation and set up New Mexico's program to both take over permitting for those waters federally protected and establish a state program for those waters that have lost federal protection. **Your voice is critical** - as the state establishes this program, communities across New Mexico have a crucial role to play to ensure the protection of our surface waters.

Below, you'll find details about important considerations to include in our state-led surface water quality program language:

Develop language to specifically protect Tribal waters and Tribal engagement

SB 21 includes language which states that all permits shall protect downstream Tribes' water quality standards. It is critical that this broad protection is retained in the draft rules, and that language is added defining what those water quality standards are. In order to do this right,

a robust government-to-government consultation process between NMED and these Sovereign Nations must occur prior to the start of a rulemaking.

- The rule must further develop language that specifically protects all Tribal water quality standards from upstream pollution.
- Work with Tribes, Pueblos, and Nations to identify and include a definition of Tribal Water Quality Standards.
- Ensure that Tribal engagement is a key component of the surface water quality permitting program by creating a process for Tribes, Pueblos, and Nations to easily request a hearing or raise issues that will result in a hearing.
- Robust and meaningful government-to-government consultation with the Sovereign Nations of New Mexico must be a foundational part of the rulemaking from start to finish.
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Ensure Public Notice, Participation, and Hearings requirements are clear and consistent

SB 21 includes an array of requirements intended to reach as many members of the public as possible when a permit is issued. Use the talking points below to ask the agency to include additional language in the rules to speak to this statutory requirement.

- Include language requiring notices in multiple formats, including a variety of media, and languages to ensure as many members of the public are reached as possible as required by SB21.
- Include language that ensures robust, clear, and consistent public notice and comment opportunities on permit applications and renewals, draft permits, notices of intent for coverage under general permits, requests for hearings, and the appeals process.

Ensure clear and protective General Permit requirements

A general permit is a permit that is issued for activities or projects that produce similar, usually minimal, environmental impacts. These permits are important to provide streamlining for certain kinds of activities but it is equally important to ensure the protection provided under these general permits sufficiently protects our most precious resource. Point source discharges are releases of pollutants from a specific location into a surface water of the state and dredging and filling discharges are earthmoving activities that impact wetlands and other waterways.

- Language should be developed in the regulations to include permit conditions that will be required in all general permits.
- Language should be developed for both point source and dredge and fill permits that outlines a clear and consistent process for requesting coverage by general permits.
- The rules must include clear and consistent thresholds for when a discharge must be regulated by an individual permit instead of a general permit. These thresholds must

protect our more vulnerable and special waterways and ensure that complex projects get proper oversight.

Strengthen the requirements for state Dredge and Fill permits

A dredge and fill permit provides important protections for wetlands and other waterways by placing requirements on the permittee for earthmoving activities that would impact protected waters. Avoidance and minimization is a required step in the permitting process that requires permittees to first attempt to avoid negative impacts from their project or activity through things like project planning and strategic design to minimize or eliminate the need for activities that discharge material into waterways or considering the least damaging location for the project, then to minimize those impacts that cannot be avoided through things like best management practices. Compensatory Mitigation is the next step, after all avoidance and minimization strategies have been exhausted, and includes establishing, restoring, or enhancing wetlands and other waterways to offset the impacts. It's critical that compensatory mitigation is the final step in the process and approached with extreme caution—some areas are irreplaceable and cannot be offset.

- Include the requirement of avoidance and minimization of impacts as a permit condition for both individual and general permits.
- Require thorough tracking and documentation of avoidance and minimization steps as a permit condition.
- Clarify and strengthen the required alternatives analysis process specific for dredge and fill permits
- Incorporate requirements to minimize impacts on aquatic resources, as is outlined in the Clean Water Act 404(b)(1) Guidelines.
- Require compensatory mitigation for all permits when impacts to a protected waterway cannot be avoided or minimized.
- Include a baseline mitigation ratio of at least 2:1 and develop specific requirements for key components of accepted compensatory mitigation.

Secure durable funding to complete setting up the program and for its implementation

The NM State legislature has appropriated significant funds in the past few years to see this program established, including a major investment of \$7.6 million in the 2024 legislative session primarily for this effort. More work is needed to determine how the costs of the program will be covered once the agency begins implementation.

- Work closely with the legislature to determine how the program will be funded. This will preferably be through a hybrid approach of some state funds and some permit fees, which will ensure the program is resilient and sustainable as funding availability and priorities at the state level change.

- Develop and share program costs and funding options with the public, including how equity will be recognized. We suggest an approach that utilizes reduced costs for wastewater treatment facilities, particularly in small communities, that honors the public good these services provide.