

A Guide to Clean Water In New Mexico

What is Sackett?

- ▶ “Sackett” refers to a 2023 U.S. Supreme Court decision, ***Sackett v. EPA***, which severely limited federal protections under the Clean Water Act for streams, rivers and wetlands.
- ▶ The **court limited safeguards** that had been in place for 50 years, narrowing protections only to rivers and streams that are “relatively permanent” and connected to traditional “navigable waters” and to wetlands that have a “continuous surface connection” to such waters.

Why does it matter to New Mexico?

- ▶ In arid New Mexico, most of our streams and wetlands do not meet these new definitions because most of our waters don’t flow year-round and most of our wetlands don’t have a continuous surface connection to such a stream.
- ▶ As a result, an estimated **95% of New Mexico’s rivers and streams** and **88% of the state’s wetlands** are at risk of losing federal protection from pollution.
- ▶ These water bodies serve critical functions like maintaining a **clean water supply for communities** and **healthy habitat for wildlife**.

Because of Sackett, American Rivers named ALL New Mexico rivers the most endangered rivers of 2024 nationwide.

The Problem

New Mexico does not have its own state regulatory framework to prevent discharges of pollutants into surface waters that do not have federal protection. And **we are one of three states in the nation** that does not have authorization from the U.S. Environmental Protection Agency (EPA) to administer the federal permitting program that regulates discharges of pollutants to federally protected surface waters.

The Proposed Solution

- ▶ New Mexico needs a state permitting program to protect New Mexico’s surface waters.
- ▶ Two complementary bills are needed to build a program:
 1. The first would **allow New Mexico to create its own state surface water quality permitting program** for waters that are no longer federally protected.
 2. The second would **give New Mexico the authority to take over permitting for waters** that are still federally protected under the Clean Water Act, as 47 other states have done.

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WATER CAN'T WAIT


**PROTECT
NEW MEXICO
WATERS**



Key Water Terms

Why It Works For New Mexico

- ▶ Allowing the state to manage its own water programs would cut red tape and **streamline the permitting process** by placing all surface water permitting in one agency, the New Mexico Environment Department (NMED).
- ▶ Having NMED — not EPA — manage permitting would **ensure New Mexico's precious water resources are managed by local experts**.
- ▶ **Exemptions for local interests would remain** under a state program, including for farming and ranching activities, acequia operations, and certain industrial operations.

Funding for the Surface Water Quality Permitting Program

- ▶ The Legislature has supported development of a state surface water permitting program by appropriating to NMED:
 - ▶ \$250,000 in 2022 (not exclusive-ly for permitting program)
 - ▶ \$680,000 in 2023
 - ▶ \$7.6 million in 2024 (mostly for permitting program)

Surface waters are lakes, rivers, streams, wetlands, and other water bodies.

Waters of the U.S. (WOTUS) is a federal Clean Water Act term defining the waters that are subject to federal jurisdiction: traditionally navigable waters; surface waters that flow “relatively permanently” into these navigable waters; and wetlands that have a “continuous surface connection” to protected waters.

Navigable waters are a type of water included in the definition of WOTUS, and are waters that presently or in the past have been used or may be used to transport interstate commerce.

Surface waters of the state are waters protected at the state level and including perennial, intermittent, and ephemeral streams, wetlands, playa lakes, and other water bodies.

Perennial waters flow year-round.

Intermittent waters flow seasonally when they receive water from groundwater, snow melt, or rain.

Ephemeral waters flow temporarily in response to rain or snow melt.

Point source pollution is pollution from identified sources such as a pipe, ditch, channel, or concentrated animal feeding operation. Discharges from wastewater treatment plants are good examples of point source pollution.

Dredge and fill activities are earthmoving activities in wetlands and other surface waters, including construction.

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