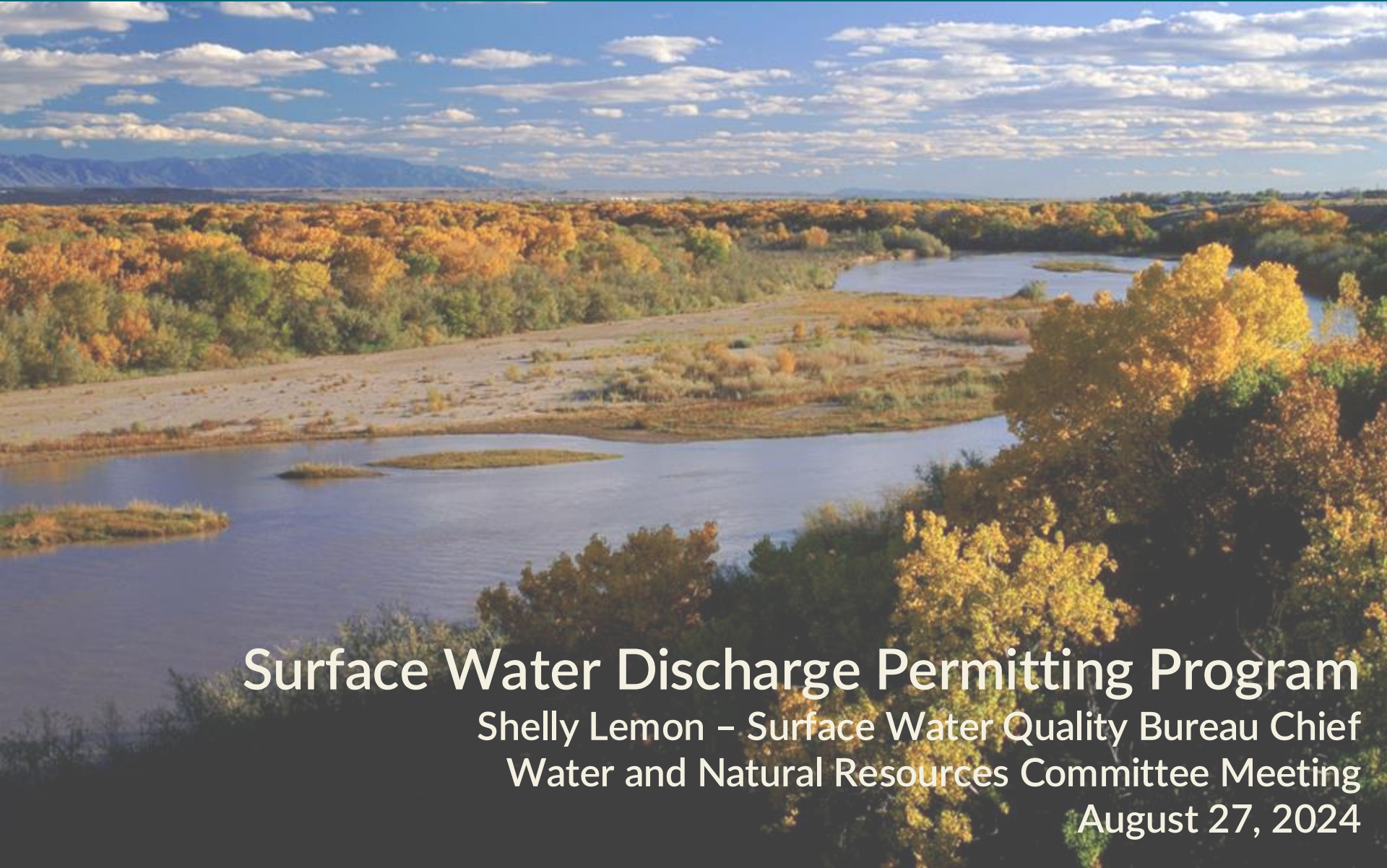




New Mexico Environment Department



Surface Water Discharge Permitting Program

Shelly Lemon – Surface Water Quality Bureau Chief
Water and Natural Resources Committee Meeting

August 27, 2024



Federal & State Clean Water Protections

Clean Water Act

- Prevent, reduce, and eliminate pollution to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
- Improve water quality such that the Nation’s waters are “fishable” and “swimmable.”
- Eliminate the discharge of pollutants into WOTUS (by 1985).
- Water quality has improved under the authority of the CWA, which has had direct benefits for drinking water, public health, recreation, wildlife, & local economies.

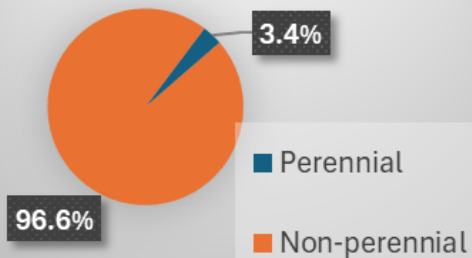
Water Quality Act

- Provides authority for water quality management in NM.
- Establishes the Water Quality Control Commission as the “state water pollution control agency” for all purposes of the CWA.
- Protect water quality and designated uses.
- Prevent, reduce, and abate water pollution at sites that pose a risk to human health and the environment.
- May adopt regulations for surface water discharges.

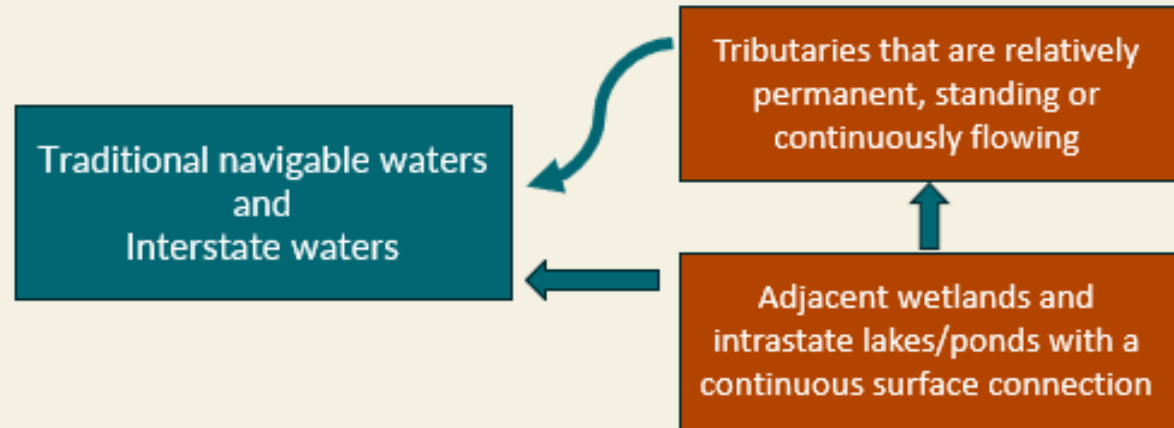


U.S. Supreme Court – *Sackett v. EPA*

Stream Miles in NM



- On May 25, 2023, the U.S. Supreme Court in *Sackett v. EPA* held that the CWA applies to "relatively permanent bodies of water" that "have a continuous surface connection" with a traditional navigable water or interstate water.
- What's still included in WOTUS? The revised rule:





WOTUS vs. SWOTS

Waters of the U.S. (WOTUS)

- (1) Traditional navigable waters (TNWs), territorial seas, and interstate waters.
- (2) Impoundments of these waters.
- (3) Tributaries of these waters that are relatively permanent, standing, or continuously flowing bodies of water.
- (4) Adjacent wetlands that are relatively permanent, standing, or continuously flowing and have a continuous surface connection to waters in #1-3.
- (5) Additional intrastate lakes and ponds that are relatively permanent with a continuous surface connection to waters in #1-3.

Surface Waters of the State (SWOTS)

NM's definition of "Surface Waters of the State" is more inclusive than WOTUS.

- ▣ lakes, rivers, streams (incl. intermittent and ephemeral streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, reservoirs, and natural ponds.
- ▣ all tributaries of such waters, including adjacent wetlands, manmade bodies of water that were originally created in a SWOTS, and any WOTUS not included in the preceding description.
- ▣ NOT private waters
- ▣ NOT waste treatment systems
- ▣ 20.6.4.7(S)(5) NMAC



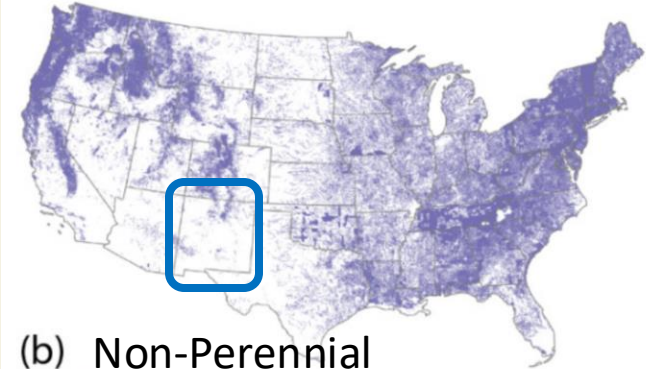
Impact of *Sackett* on New Mexico

Many of NM's waters are likely no longer subject to federal CWA permit requirements.

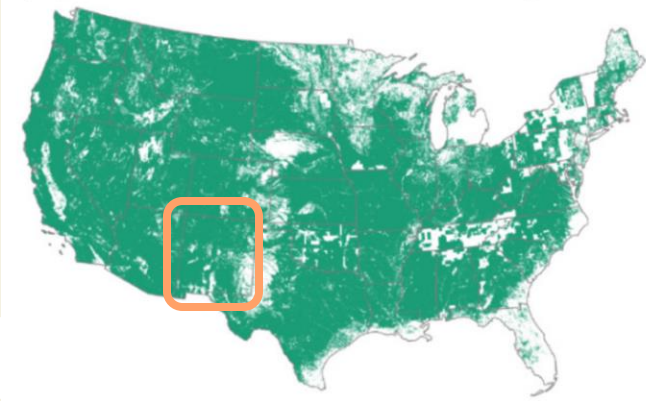
Likely OUT

- ✘ Ephemeral waters
- ✘ Wetlands without continuous surface connection (dike, road)
- ✘ Isolated wetlands (playas, springs, fens)
- ✘ Isolated ponds/lakes
- ✘ Interrupted stream reaches?
- ✘ Intermittent waters?

(a) Perennial



(b) Non-Perennial





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)

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

- 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 materials in surface waters of the state
 - The program will not apply to tribal waters, but NMED will be responsive to tribal concerns



Surface Water Advisory Panel

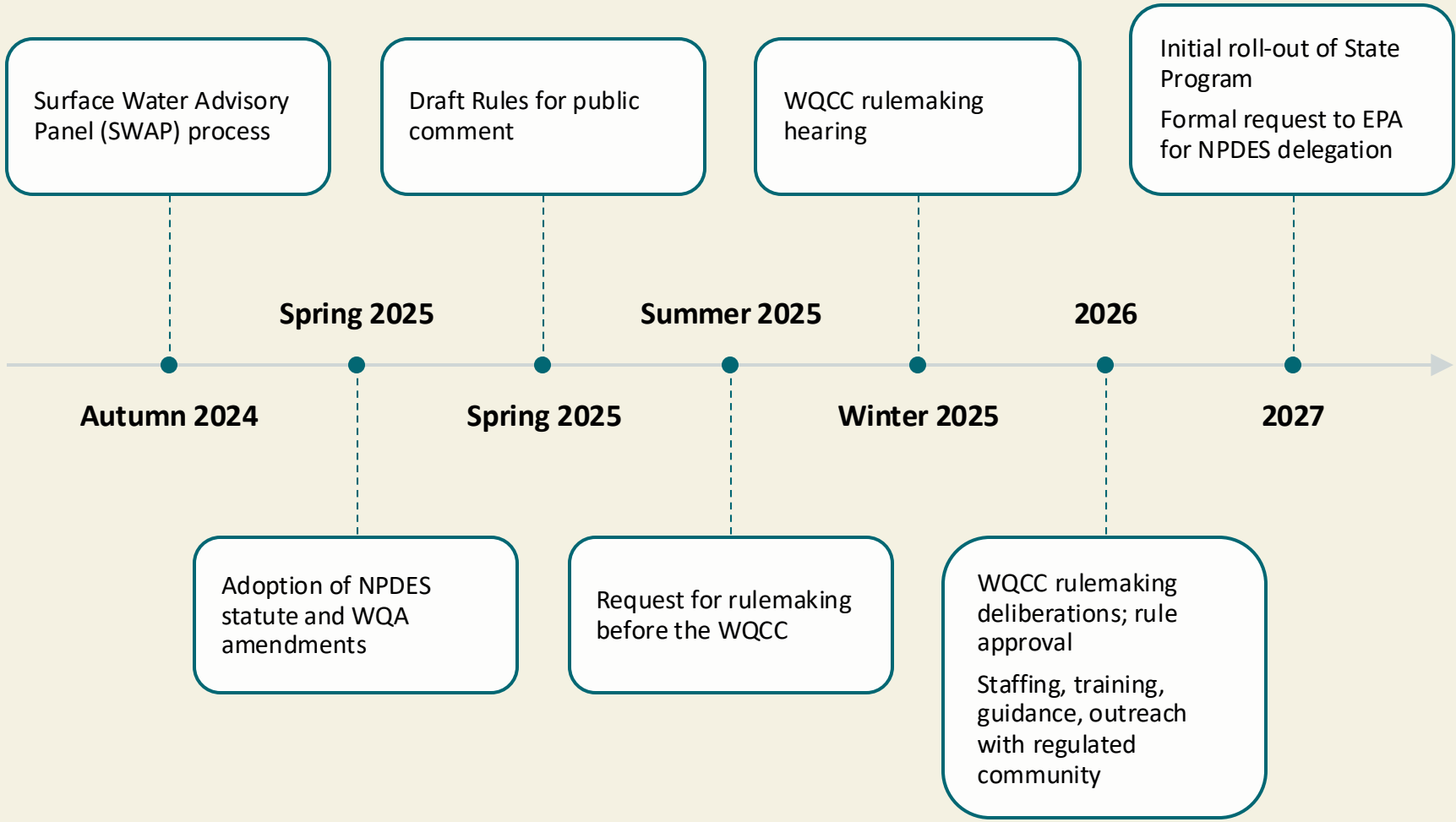


- Provide technical information, practical considerations, and policy perspectives from a wide range of stakeholders
- Inform NMED's development of legislation and rules for consideration by the Water Quality Control Commission
- NMED will post updates on the process here:

<https://www.env.nm.gov/surface-water-quality/swap/>



Timeline





State Permit Program Update

The State Legislature has appropriated funds to NMED to develop (and implement and administer) a state surface water discharge permitting program.

With that funding, NMED has:

- Created a State Permit Program Team in SWQB
- Hired 3 staff to begin developing a program
- Hired a contract lawyer to assist with draft statute and rules
- Hired a contractor to assist NMED with program development and be an expert witness for future rulemaking
- Hired a facilitator to help with the advisory panel
- Initiated the Surface Water Advisory Panel (SWAP) process
- Hired a contractor to develop a permitting database

NMED will be creating 3-4 positions in FY25 to continue program development.



Estimated Program Costs & Revenue Options



- 35-50 FTE = permitting, compliance, enforcement, data management, & support staff (attorneys, financial, HR, admin)
- \$6M-\$9M per year = Projected program costs for implementation by FY28
- Current costs are about 1/10 that amount (~\$800,000)
- Funding/Revenue options:
 - 100% fee-based
 - 100% legislative appropriations (general fund)
 - a combination of fees and general fund

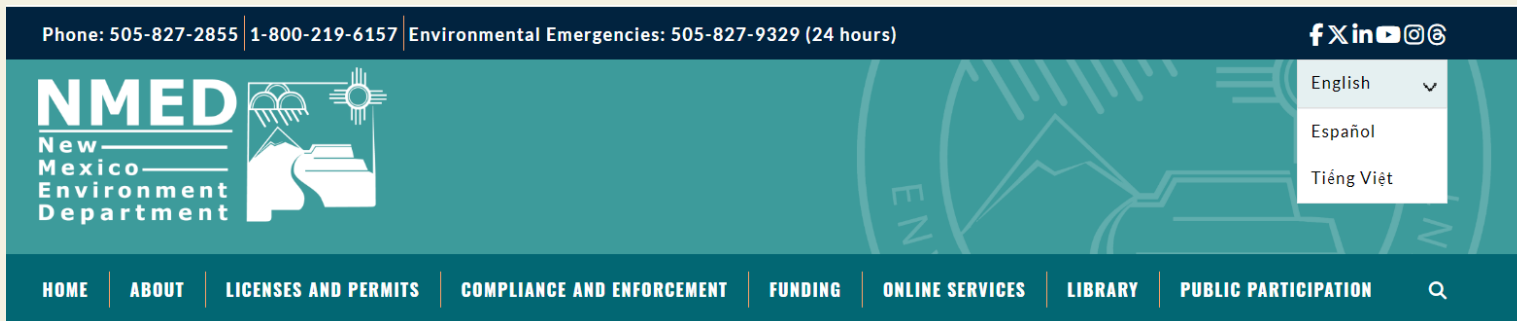


Contact Us / Learn More

Email: swq.pp@env.nm.gov

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

SWAP website: <https://www.env.nm.gov/surface-water-quality/swap/>



Home / Surface Water Quality Bureau



Surface Water Quality State Permitting Program



Contact us

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



NMED 2025 Legislative Priorities



- Non-recurring funding requests
- NMPDES Statute to provide state authority for federal NPDES program



- Water Quality Act Update
 - ▣ Framework for state surface water permitting
 - ▣ Clarify authority for water reuse rules
 - ▣ Clean up contaminated sites



- Also: PFAS Consumer and Environmental Protection Bill; Hazardous Waste Act Amendment; Solid Waste Act Modernization & Extended Producer Responsibility; Permit fee fund flexibility

