

HOUSE JOINT MEMORIAL 21

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

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A JOINT MEMORIAL

REQUESTING THE DEPARTMENT OF ENVIRONMENT TO PURSUE STATE
PRIMACY FOR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
ADMINISTRATION.

WHEREAS, the federal Clean Water Act establishes the basic
structure for regulating discharges of pollutants into the
waters of the United States and for setting standards for
surface water quality; and

WHEREAS, one part of that act is the national pollutant
discharge elimination system, which is a permitting process for
point source discharges; and

WHEREAS, this permitting system includes discharges of
storm water runoff; and

WHEREAS, in New Mexico, there are more than one hundred
twenty facilities that operate under separate permits,

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1 including fifty-two municipal permits, twenty-six industrial
2 permits and three federal facility permits; and

3 WHEREAS, New Mexico has more than two thousand facilities
4 that operate under general permits that relate to specific
5 industry sectors; and

6 WHEREAS, in December 2015, the federal environmental
7 protection agency issued the middle Rio Grande watershed based
8 permit for twenty-one entities; and

9 WHEREAS, although the department of environment
10 consults with the environmental protection agency on such
11 issues, it only oversees the implementation portions of the
12 federal Clean Water Act through periodic updates of water
13 quality standards, monitoring and assessment, listing of
14 impaired waters and development of total maximum daily load
15 regulations, but it does not have the legal authority or
16 primacy to regulate or issue national pollutant discharge
17 elimination system permits; and

18 WHEREAS, primacy would confer authority from the
19 environmental protection agency to state implementation of the
20 national pollutant discharge elimination system permit program;
21 and

22 WHEREAS, the environmental protection agency encourages
23 states to seek primacy, but New Mexico is one of only four
24 states in the nation that do not have primacy under the federal
25 Clean Water Act for issuing national pollutant discharge

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1 elimination system permits; and

2 WHEREAS, on December 22, 2015, the environmental
3 protection agency issued a watershed based permit for the
4 middle Rio Grande, raising the specter that issuance of the
5 permit was prompted at least in part because of the lack of
6 state primacy in the matter; and

7 WHEREAS, the national pollutant discharge elimination
8 system permit program is currently regulated and administered
9 directly by the environmental protection agency, region 6, in
10 Dallas, Texas; and

11 WHEREAS, potential benefits of gaining primacy include the
12 following:

13 A. congress's preference for states to implement
14 the national pollutant discharge elimination system permit
15 program;

16 B. the constitution of New Mexico specifically
17 states that the legislature shall provide for control of
18 pollution and control of despoilment of the air, water and
19 other natural resources of the state;

20 C. primacy represents regaining authoritative
21 control of that process, and New Mexico is the only
22 southwestern state not granted this authority by its
23 legislature;

24 D. the national pollutant discharge elimination
25 system permit program is the only federal environmental program

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1 for which state agencies do not have the authority to
2 administer and manage a state's water resources; and

3 E. a state program would place strong emphasis on
4 compliance rather than enforcement and would foster better and
5 more efficient consultation on program and permit issues than
6 has occurred with the environmental protection agency;

7 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE
8 STATE OF NEW MEXICO that the department of environment be
9 requested to pursue primacy from the environmental protection
10 agency for implementation and administration of the national
11 pollutant discharge elimination system permit program; and

12 BE IT FURTHER RESOLVED that copies of this memorial be
13 transmitted to the governor, the secretary of environment, the
14 administrator of the environmental protection agency and the
15 New Mexico congressional delegation.