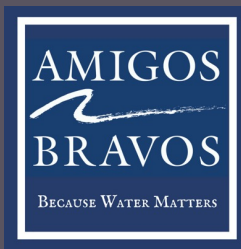


NEW MEXICO'S SURFACE WATERS AT RISK

The Need For A State Surface Water Quality Discharge Permitting Program



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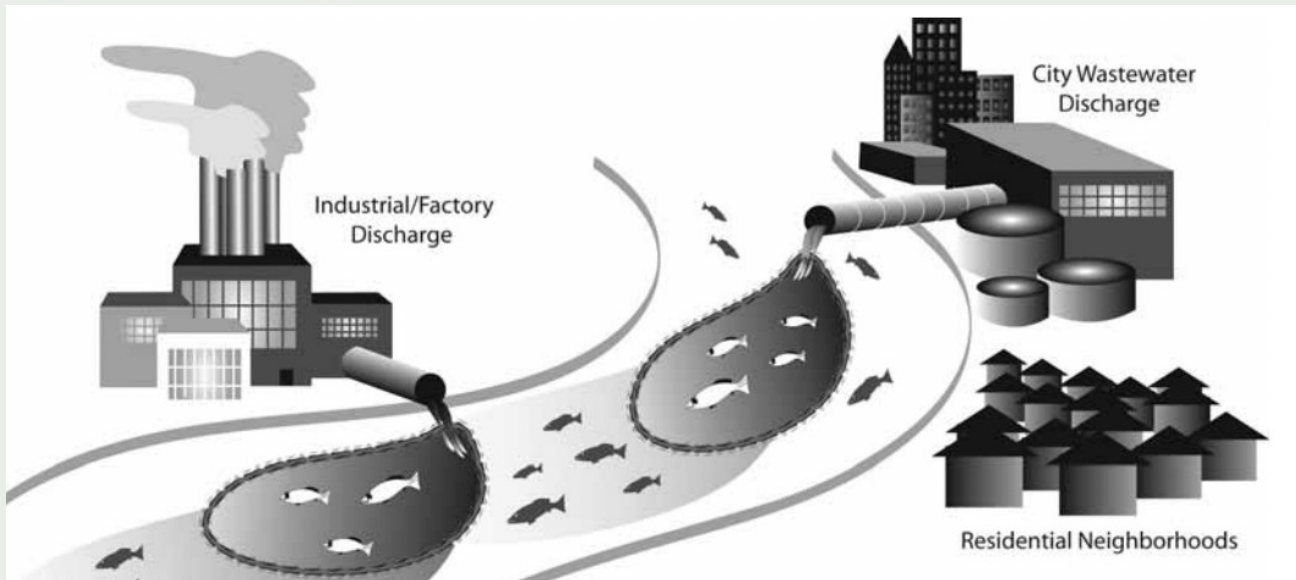
**Water and Natural
Resources Committee
September 29, 2022**



THE CLEAN WATER ACT



- The federal Clean Water Act, passed in 1972, has guided the transition from rivers that literally burned to healthy watersheds where species like the bald eagle and river otter once again thrive.
- Objective: To restore and maintain the chemical, physical and biological integrity of the nation's waters (rivers, streams, lakes, and wetlands).



The Clean Water Act requires wastewater and industrial facilities to clean water before discharging into the nation's rivers.

Several types of permits:

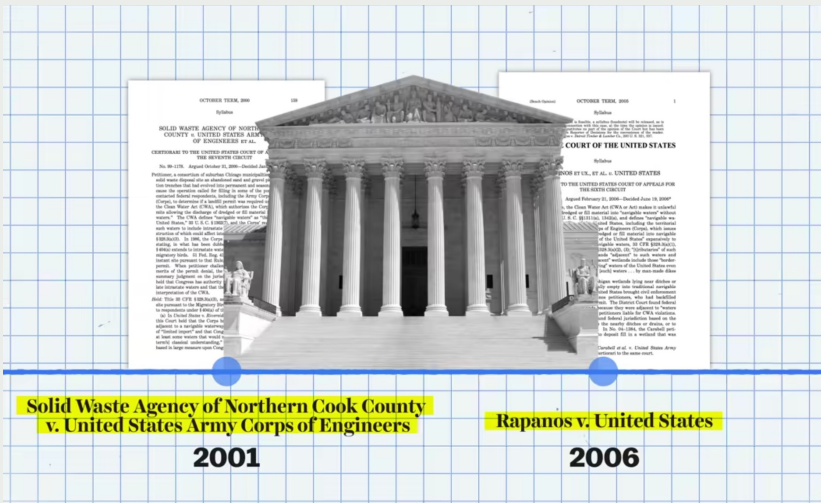
1. End of pipe discharges (wastewater facilities, industrial sites - 402/NPDES Permits)

2. Dredge and fill permits (404 Permits)

The assumption for 30 years was that all waterways were federally protected from pollution through these permitting processes.

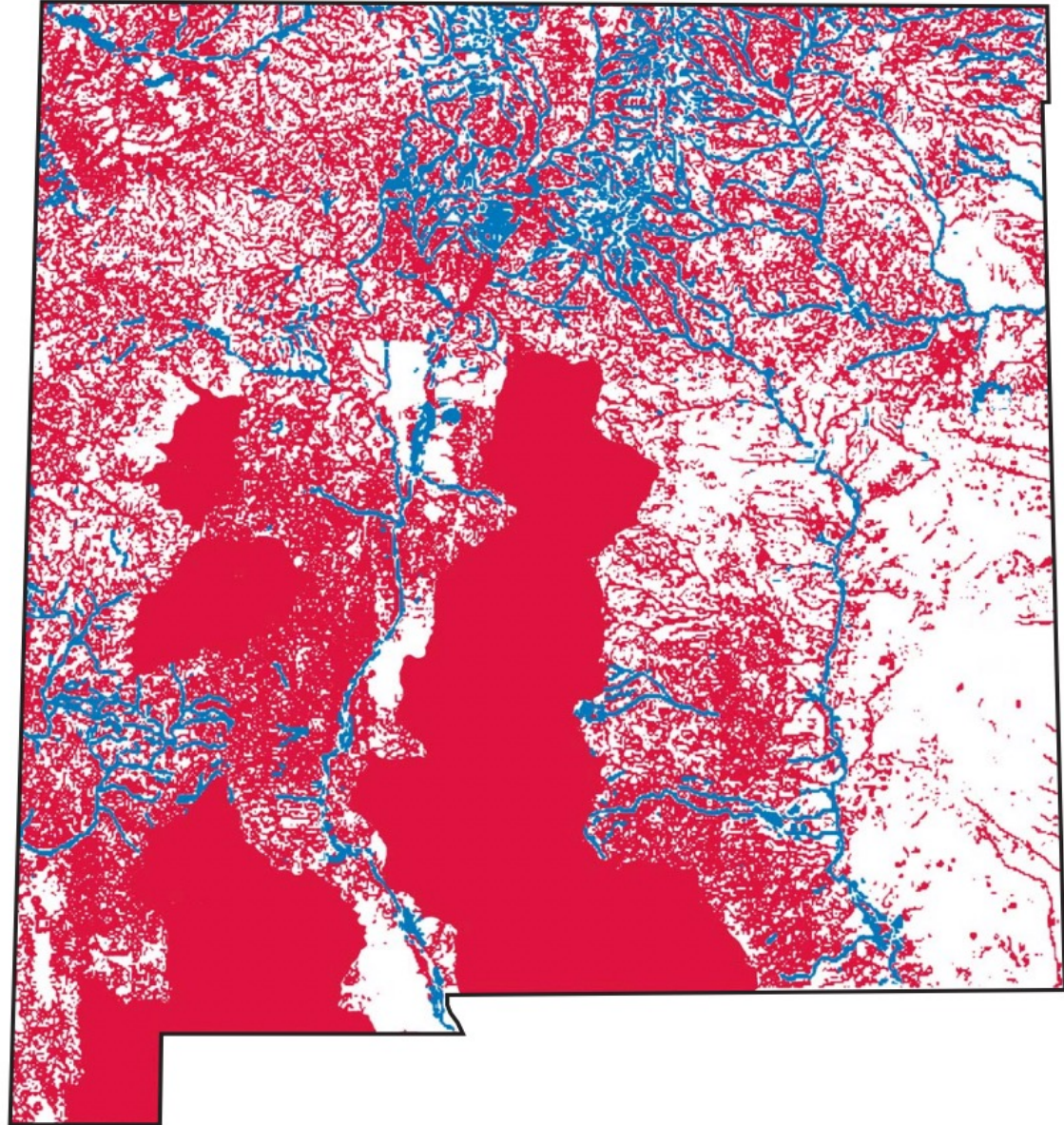
New Mexico in the Crosshairs

- Supreme Court decisions in 2001 and 2006 have greatly reduced protections in New Mexico.
- Since the Supreme Court decisions, federal Clean Water Act regulations have swung back and forth creating regulatory uncertainty.
- New Mexico has been in the crosshairs of this uncertainty, with at times up to 96% of our waters left unprotected.
- If waters are not protected under the Clean Water Act, federal permits are not required.



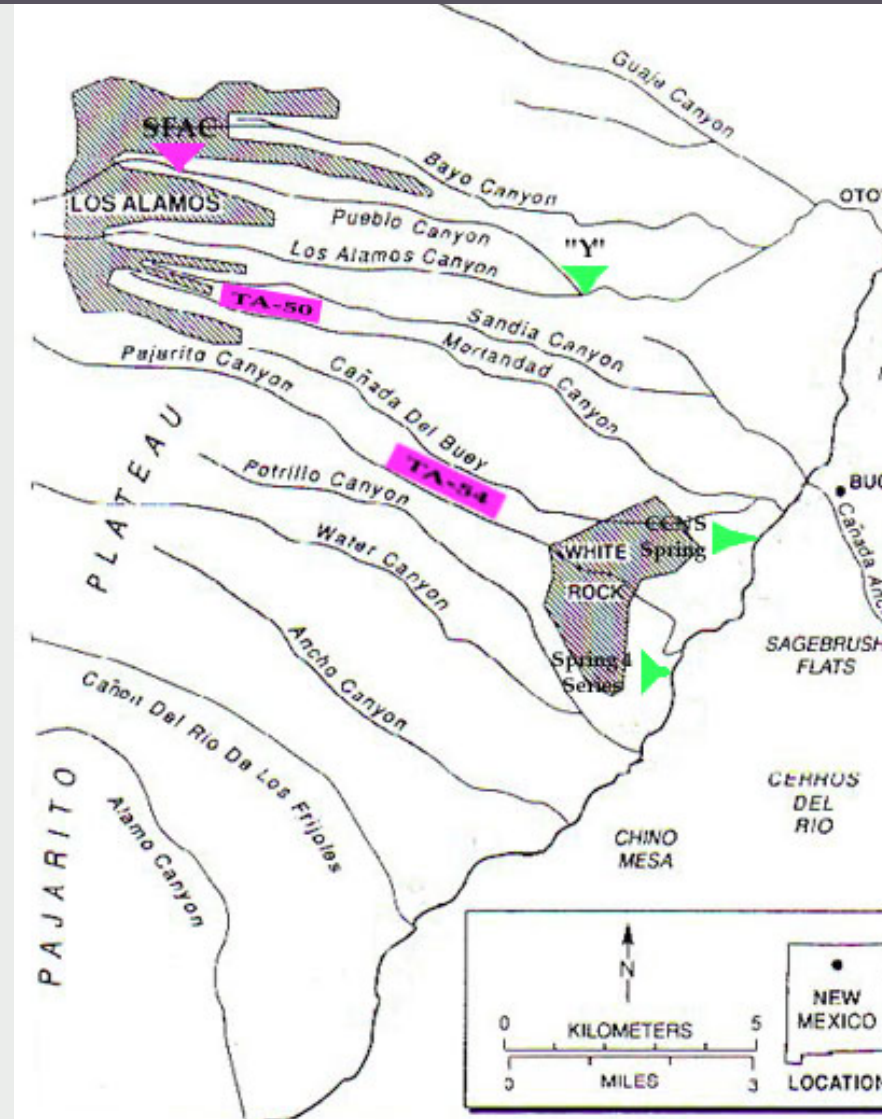
Red = New Mexico waters and areas that have been stripped of federal protections at some point in the past 15 years.

**solid red = closed basins
red lines = streams**

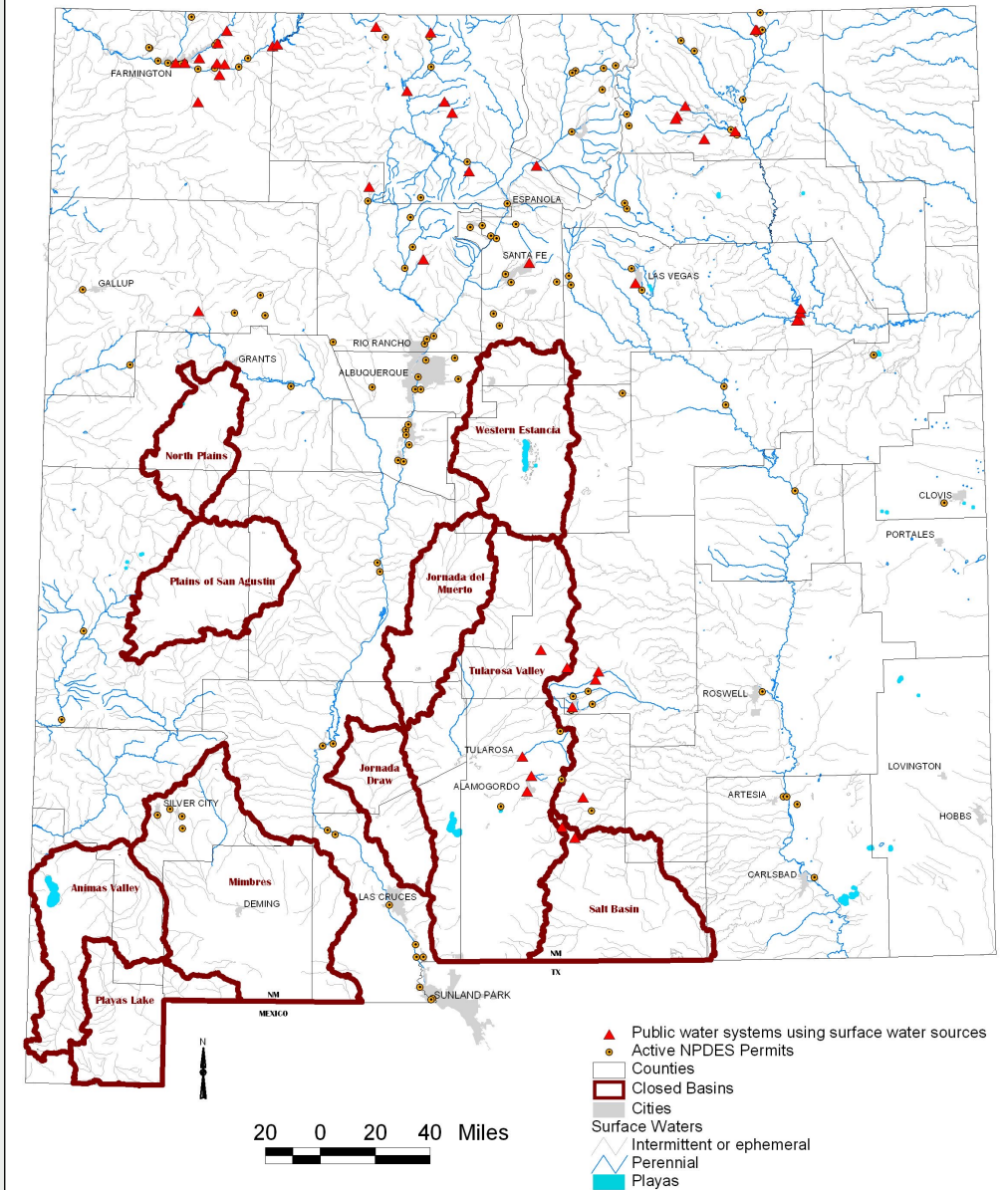


Types of waters that have lost protections:

- Ephemeral Streams (contains water briefly only in direct response to precipitation)
- Intermittent Streams (contains water for extended periods only at certain times of the year, such as when it receives seasonal flow from springs or melting snow.)



NEW MEXICO CLOSED BASINS



Types of water that have lost protections cont.

Closed Basins

- 10 closed Basins in New Mexico
- Closed Basins make up 20% of New Mexico.

Types of waters that have lost protections cont.

- Perennial waters upstream from ephemeral segment (Santa Fe River, Tijeras Arroyo)
- Interstate waters (Rio Costilla, Gila River)

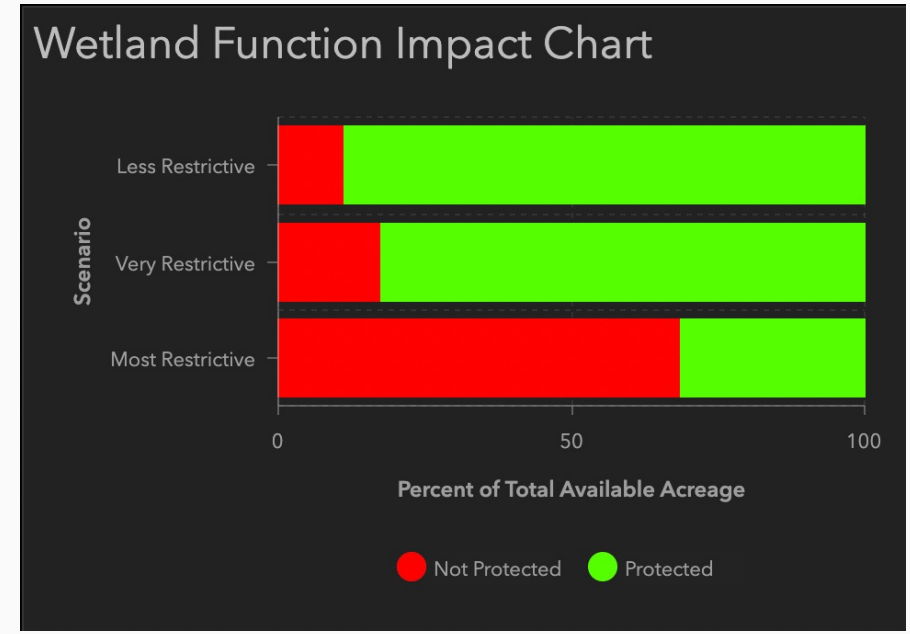
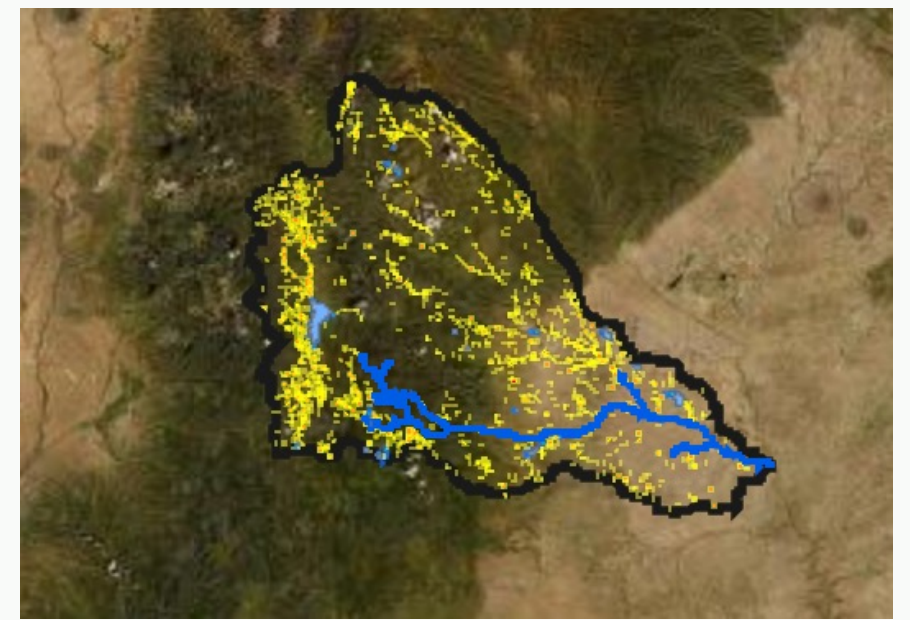
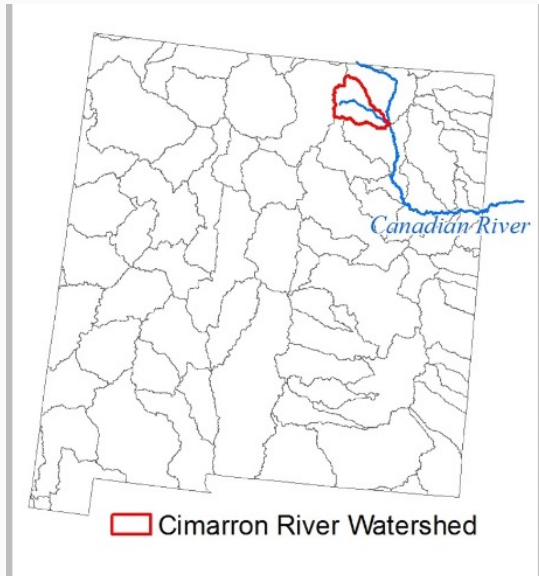


Types of water that have lost protections cont.

Large Percentage of New Mexico's Wetlands

Cimarron River Watershed, NM

In one sample watershed up to 69% of wetlands were not protected



What does this loss of Clean Water Act Coverage Mean for New Mexico?

- The federal government (EPA out of Dallas) administers surface water quality discharge permits in New Mexico.
- If waters are not protected under the Clean Water Act, federal permits are not required.
- This means that there isn't a Clean Water Act regulatory mechanism to control pollution discharges in the vast majority of our state's surface waters.

The Good and The Bad



THE BAD NEWS:

New Mexico is one of two states that does not have a state administered surface water permitting program.

THE GOOD NEWS:

New Mexico's definition of waters of the state is much more expansive than the federal definition and includes ephemeral streams, intermittent streams, wetlands, etc.

Where do we go from here?



During the 2022 legislative session, Governor Lujan Grisham proposed \$1.185 million in special appropriations to develop a state surface water permitting program. However, only \$190k was appropriated.

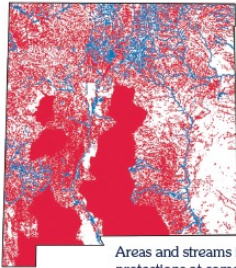
Action Needed:

NMED needs to be fully funded, including funding for staff, to develop a surface water permitting program.



SURFACE WATER QUALITY PERMITTING PROGRAM

Fact Sheet



Areas and streams in red represent closed basins (solid red) and streams (red lines) that have been stripped of federal protections at some point in the past 15 years.

Action Needed:

Fund the development of a state surface water quality permitting program, including funding NMED staff for FY2024.

- During the 2022 legislative session, Governor Lujan Grisham proposed \$1.185 million in special appropriations to develop a state surface water permitting program. However, only \$190k was appropriated. NMED needs the full \$1.185 million, which includes funding for NMED staff, to ensure water quality in New Mexico's waters is protected.
- New Mexico is one of two states nationwide that does not have a state administered surface water quality permitting program to ensure our waters are appropriately protected from point source discharges.
- Federal authority that has in the past protected New Mexico's waters has been significantly restricted since 2001, leaving, at times, more than 96% of the state's surface waters with no federal protection from pollution.
- It is time for New Mexico to protect its own waters. We can no longer allow New Mexico to be put at risk and harmed by the uncertainty created by shifting federal politics.

- Supreme Court decisions in 2001 and 2006 have greatly reduced the number and types of waters protected in New Mexico under the federal Clean Water Act, including limiting protection of intermittent and ephemeral waters and closed basins.
- Since the Supreme Court decisions, federal Clean Water Act regulations have swung back and forth depending on each administration's vastly different interpretations of which waters are protected under the Clean Water Act.
- New Mexico has been in the crosshairs of this uncertainty. At times up to 96% of our waters were left unprotected and vulnerable to unregulated discharges. This means that there isn't a Clean Water Act regulatory mechanism to control pollution discharges in the vast majority of our state's surface waters.
- The Clean Water Act requires wastewater and industrial facilities to obtain permits and treat water before discharging into the nation's rivers. But, if waters are not protected under the Clean Water Act, federal permits are not required.
- Currently, EPA issues surface water permits for New Mexico. Due to federal political pressures, this process has created regulatory uncertainty and could leave some discharges without sufficient regulatory oversight. The Silver City sewage plant, which discharges into a closed basin, is a category of water that is not federally protected and does not have a federal discharge permit. Closed basins make up 20% of the land area in New Mexico.
- A state permitting program would provide regulatory certainty and ensure that New Mexico's surface water resources are better protected.

It's time for New Mexico to protect its own waters.



Valle Vidal by Jim O'Donnell

We can no longer leave it up to the federal government.

The full \$1.185 million included in the FY2023 executive request (or NMED's/executive request for FY2024, if it is different) is necessary to develop a New Mexico program to control the discharge of pollution into New Mexico's rivers, streams, reservoirs, and lakes.