

## PUBLIC LANDS

### Groups want N.M. high court to strike down access rule

Jennifer Yachnin, E&E News reporter

Published: Monday, March 16, 2020



The New Mexico Supreme Court is reviewing a case over access to rivers and streams on private property. Kermit Murray/Wikimedia Commons

Conservation advocates are urging New Mexico's Supreme Court to strike down a regulation that would block public access to rivers and streams that cross private property.

A coalition made up of the New Mexico Wildlife Federation, the Adobe Whitewater Club and the New Mexico chapter of Backcountry Hunters & Anglers filed a [petition](#) Friday asking the court to nullify a 2018 rule issued by the state's game commission.

The "non-navigable waters rule" allows private landowners to petition New Mexico's State Game Commission to close public access to rivers or streams unless visitors have written permission from the landowners.

To date, the commission has approved five requests, including stretches of the Rio Chama and Pecos River.

"This is a critical issue to New Mexico anglers and the population at large," NMWF Executive Director Jesse Deubel said in a statement.

"While some landowners are quick to assert that this is an attack on private property rights," said Deubel, "the reality is that they have deprived the public of its right to use public waters for decades."

The petition asserts that the 2018 rule violates the state's constitution, which dictates that "the unappropriated water of every natural stream, perennial or torrential, within the State of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state."

BHA New Mexico chapter spokesman Joel Gay pointed to barbed wire fences that some landowners have stretched across waterways, as well as the "no trespassing" signs that dot riverbanks.

"For as long as anyone can remember, New Mexico anglers have been prohibited from using miles of streams that our state constitution says should be open to all," Gay said.

The groups also highlight a 1945 state Supreme Court ruling on the subject, as well as more recent opinions issued by the New Mexico state attorney general's office.

In September 2019, current Assistant Attorney General John Grubescic wrote that the state constitution "does not allow an interpretation ... that would exclude the public from using public water on or running through private property for recreational uses if the public water is accessible without trespassing on private property."

Earlier this month, New Mexico Department of Game & Fish Director Michael Sloane similarly filed a lawsuit against the State Game Commission seeking clarification on when a landowner may bar the public from accessing waterways.

---

Twitter: [@jenniferyachnin](#) | Email: [jyachnin@eenews.net](mailto:jyachnin@eenews.net)

---

*The essential news for energy & environment professionals*

© 1996-2020 Environment & Energy Publishing, LLC [Privacy and Data Practices Policy](#) [Site Map](#) [Contact Us](#)

