

NEW MEXICO ENVIRONMENTAL LAW CENTER

New Mexico Groups Appeal EPA's Dirty Water Rule

Today three New Mexico based organizations - Amigos Bravos, the New Mexico Acequia Association, and Gila Resources Information Project - joined together to appeal the US Environmental Protection Agency (EPA) and the Army Corps of Engineers so called Navigable Water Protection Rule ("2020 Rule"). The 2020 Rule, which went into effect yesterday, drastically shrinks the number of New Mexico waters that are protected under the Clean Water Act. We filed the appeal with the US District Court for the District of New Mexico on behalf of the groups.

"The Trump administration has opened the pollution floodgates," said Rachel Conn, Projects Director with Amigos Bravos. "This 2020 Dirty Water Rule protects the interests of polluters over the interests of the public who rely on clean water for drinking, agriculture, recreation, and cultural values."

New Mexico is disproportionately affected by the 2020 Rule because of the large number of small streams in the state that flow only during wet times of the year. These smaller ephemeral streams have historically been protected by the Clean Water Act but under the new rule they are left unprotected.

"We are deeply concerned that many of our streams and rivers would lose protections under the 2020 rule. We rely on clean water to grow crops and raise livestock, to provide locally grown food for families, and to support agricultural livelihoods in our communities," said Paula Garcia, Executive Director of the New Mexico Acequia Association.

Unlike federal rollbacks in other areas of environmental protection, New Mexico's waters do not have state protections to fall back on. New Mexico is one of just three states that does not have delegated authority from the EPA to regulate discharges of pollution into rivers, streams, and lakes. There is now no entity with regulatory authority to manage existing discharges from the wastewater treatment plants, mines, federal facilities, and other polluters that currently discharge into these smaller New Mexico streams.

According to Charles de Saillan, Staff Attorney at the New Mexico Environmental Law Center. "This federal rule all but nullifies the protections of the Clean Water Act over many streams and wetlands in New Mexico. It reverses nearly fifty years of interpretation of the Clean Water Act by EPA, the Army Corps of Engineers, and the courts. As this regulation is implemented, permits will not be necessary for discharging pollution into many rivers, lakes, and streams. Water quality will become degraded. Our clients will suffer because they rely on clean, unpolluted water for their businesses, irrigation of crops, watering of livestock, and recreation such as fishing, river rafting, and kayaking."

Even some of our larger iconic rivers such as the Gila River in the south and the Rio Costilla in the north are threatened by this rule. The rule removes automatic protections for interstate waters – both the Gila and Rio Costilla are interstate waters – and because both of these rivers run dry before meeting up with larger downstream rivers, it is uncertain if under this new rule they will remain protected.

"It is horrifying that a New Mexico river as important as the Gila is left unprotected by this rule," said Allyson Siwik, Executive Director of Gila Resources Information Project. "Irrigators and the growing recreation-based economy of southwestern New Mexico are dependent on clean water flowing in the Gila."

The New Mexico Environment Department has estimated that as much as 96% of the surface waters in the state could lose protection under the new rule.

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