



ATTORNEYS AT LAW

May 8, 2017

Todd Leahy, Deputy Director
New Mexico Wildlife Federation
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Re: April 1, 2014 AG Opinion 14-04 OPINION OF GARY K. KING, Attorney General
Question: May a private landowner exclude others from fishing in a public stream that flows across the landowner's property?
By: Stephen R. Farris, Assistant Attorney General
To: The Honorable Luciano "Lucky" Varela, New Mexico State Representative, 1709 Callejon Zenaida, Santa Fe, NM 87501

August 5, 2016 AG Opinion, Office of the Attorney General, State of New Mexico
2016 WL 4361592 (N.M.A.G.)
Re: Opinion Request - Access to Public Waters on Private Property
By: Jennie Lusk, Assistant Attorney General
To: The Honorable Luciano "Lucky" Varela

Dear Todd,

This letter confirms my review of the two legal opinions issued by the Attorney General's Office identified above and confirms that I find no defect or omission in their respective analyses that would cause me to question their conclusions. You and I also met with Jennie Lusk the author of the 2016 Opinion and she confirmed the bases and conclusions of the opinions. The key conclusion is summed up in the 2016 Opinion as follows:

We believe that SB 226 appropriately regulates the use of the state's public waters, provided it is interpreted and applied only to prohibit a person, absent the required consent, from gaining access to private property from a stream or other public water and from gaining access to a stream or other public water from private property.

To state our conclusion another way, the constitution does not allow an interpretation of SB 226 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.

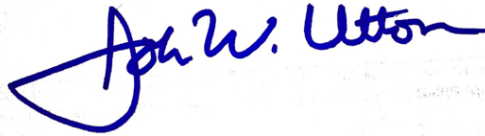
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As we discussed with Ms. Lusk, this conclusion means that landowners may not place a fence across a stream or otherwise preclude any person from recreating within a stream, including by traversing up and down the stream, so long as that person does not gain access to or from the stream by crossing private property. While the Attorney General's Opinions provide well-reasoned guidance, they do not have the force of law of a court holding. As the New Mexico Supreme Court has held: "This court is not bound by opinions of the Attorney General. We need give them only such weight as we deem they merit. If we think they are right we follow and approve, and if we are convinced they are wrong we will reject them." *Perea v. Board of Torrance County Comm'rs*, 77 N.M. 543 (1967).

Very Truly Yours

UTTON & KERY, P.A.

A handwritten signature in blue ink, reading "John W. Utton". The signature is stylized, with a large, looped initial "J" and a clear, legible name.

BY: _____
John W. Utton