

September 15, 2023

New Mexico Attorney General Raúl Torres  
Office of the Attorney General  
Santa Fe, New Mexico  
Via email to ebui@nmag.gov

**SUBJECT: COMPLAINT RE UNSAFE OBSTRUCTION OF PADDLERS' UTILIZATION OF THE WATER IN NEW MEXICO'S RIVERS AND STREAMS FOR RECREATION**

Dear Attorney General Torres:

In response to your August 7 Press Release, *New Mexico Attorney General Raúl Torrez Announces Effort to Ensure Public Access to Rivers and Streams in New Mexico*, volunteer members of the Adobe Whitewater Club of New Mexico and the New Mexico Paddlers Coalition, two incorporated, non-profit New Mexico community organizations, have assembled this **Complaint** for your office's investigation and possible enforcement of the New Mexico Supreme Court Order and Opinion Adobe Whitewater Club of New Mexico v. New Mexico State Game Comm'n, 2022-NMSC-020, 519 P.3d 46.

New Mexico river paddlers' access to the Upper Pecos River and the Upper Rio Chama are blocked by numerous cables and dangerous fences. One Intervenor-Respondent and the immediate upstream neighbor of another have blocked the Upper Chama River with a low cable and made access to a segment of the Upper Pecos River impossible, respectively. One landowner who applied for a certificate to privatize another segment of the Upper Pecos River below Cowles has blocked paddler access with a low cable.



In the language of your August 7 Press release, “fences consist[ing] of barbed wire at or below the water line, constitut[e] a clear public safety hazard for anglers and others accessing public waters.” Several cases documented in this complaint present a life-safety hazard to river paddlers utilizing the water in New Mexico streams and rivers for recreation. Barbed wire fences with

brush or steep adjacent slopes limit access to seniors who may not be able to carry a boat 100 yards or more for mandatory portage,



We have mapped and documented 14 cases in the **Attachment** , an integral part of this **Complaint**. Exact locations and additional descriptive information and photographs are available for your review on the linked website. Original photographs, most of which include metadata, are available on request. The OnX app is the source of the property boundary and ownership information cited herein.

<https://awmaps.maps.arcgis.com/apps/webappviewer/index.html?id=edae2b89d7544af38df9d67014ddb862>

Thank you. Please acknowledge receipt of this **Complaint**.

Sincerely,

/s/

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Scott Carpenter 9/15/23  
President, Adobe Whitewater Club of NM  
board@adobewhitewater.org

/s/

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Sherry Barrett 9/15/23  
Chair, New Mexico Paddlers Coalition  
sherrybarrett@me.com

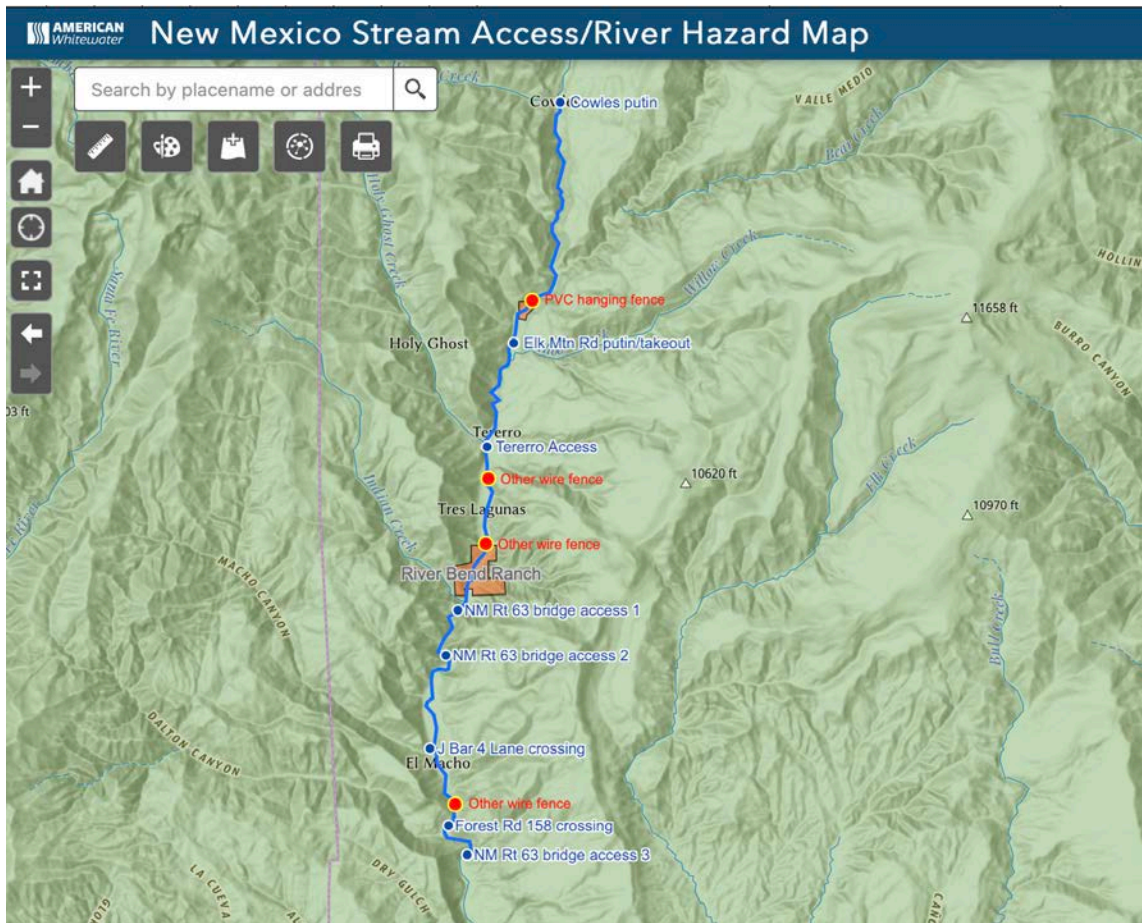


## ATTACHMENT

**Itemized Complaint to the New Mexico Attorney General re**  
Barricades and dangerous river fences on the Upper Rio Chama and the Upper Pecos River  
That deny or block recreational access and are life-safety hazards.  
Prepared by the Adobe Whitewater Club of New Mexico and the New Mexico  
Paddlers Coalition, incorporated New Mexico not for profit community organizations.  
September 15, 2023

### UPPER PECOS RIVER, Cowles to Pecos

This reach of the upper Pecos River is blocked with a cross-river, impassible barricade upstream of another stout barricade. Downstream, it is blocked by three cross river cables. All are marked by the red dots, along with blue river access points and former privatization certificate holder or applicant properties, shaded orange.



1. **Rio Dulce Ranch / Old Leaning Pine LLC and Kenneth A. and Julie K. Hersh Qualified Residence Trust and unknown owners of downstream barricade.** The first of two river barricades near the upstream boundary of the subdivided Rio Dulce Ranch

appear to align with Old Leaning Pine, LLC's (Jenkins) upstream property boundary. The second barricade, which was not visible on September 10, appeared to have been at the upstream boundary of multiple lots owned by the Kenneth and Julie Hersh trust. The remaining upstream barricade is impassable and life threatening to a paddler. Both are/were constructed of vertical pipe and barbed wire, as illustrated below. A photo of the Hersh barricade was an exhibit in the verified petition for a writ of mandamus.

The photographs included in the Attorney General's news release are of the downstream barricade demarking the privatized section of the river flowing through the subdivided Hersh and Jenkins properties (Rio Dulce Ranch) properties and the adjacent downstream subdivision with cross-river lots. The downstream barricade shown in the top photo labeled 10/22 is depicted in disrepair with upper and lower cables crossing the river but stripped of some of the vertical pipe. The barricade is repaired in the bottom photo taken July 20, 2023. Inspection on September 10, 2023, showed it to be unchanged.

The center photo in the news release depicts the "NO trespassing...includes streambed" sign depicted in the on page 1 of this complaint, believe to be at the Jenkins property line. The flanking fence makes portage impossible, completely blocking access to members of the public who wish to utilize the public water for recreation as is their NM Supreme Court affirmed constitutional right.

The language below is quoted from Joanna Prukop's July 20, 2023, email that transmitted her contemporaneous photographs.

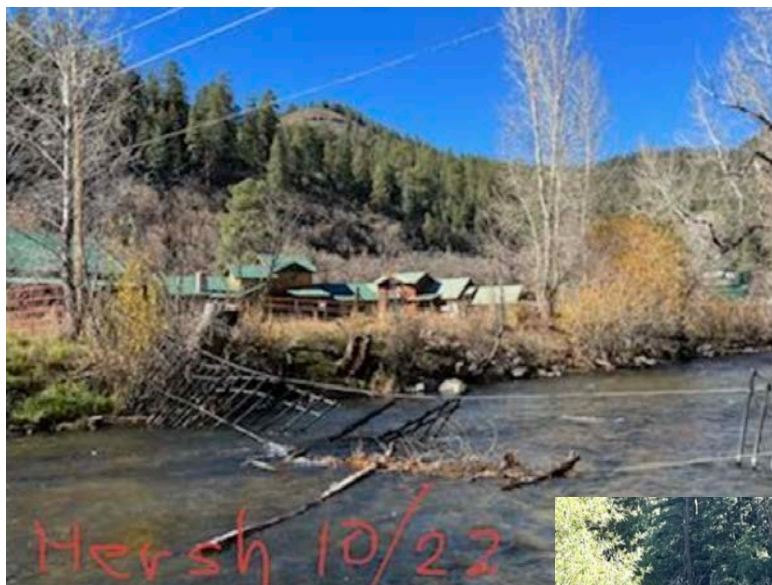
I just returned from a trip to the Hersh "compound" on the Upper Pecos River, about 16.5 miles up from the 4-way stop in the middle of Pecos. One can identify the 230+ acre property easily because of the razor wire surrounding it. The Hersh property is one of the 5 original properties that were declared non-navigable and closed under the Martinez Administration (Rule 19.31.22), and that the Lujan Grisham administration is ignoring. Today I found the same significant barrier at the northern boundary of the Hersh property that I photographed in October 2022, only now a high bridge has been added across the river on the Hersh side. This north boundary is immediately adjacent to NM Game & Fish property that is now managed by NM State Parks. This public day use area is still in sad shape due to last summer's fires and is currently closed to public use. Here are photos from today of the northern Hersh/G&F property boundary:







On the southern boundary of this long river reach that includes more lots downstream of the Hersh lots, an apparently new barrier has been installed to replace/repair the damaged barrier photographed in October 2022. This southern boundary is also immediately adjacent to NMDG&F property, the Jamie Koch Pavilion and Day Fishing Area. Here is the photo I took last October, followed by today's photos; note the two men fly fishing on the "privatized river" side of the barrier.





### Jenkins Leaning Pine PVC River Barricade, Sign, Driveway Gate









**2. Mary Anne Shannon Upstream Property Boundary, Downstream of Bert Clancy  
Public Fishing access: 35.73341, -105.67758**

A cross-river cable is located 800 feet downstream of the Bert Clancy Public Fishing access. Mid-river splices and shoreline fencing make this cable especially dangerous. The steel cable is 36" above water at 30cfs flow.





### 3. Tres Lagunas subdivision: 35.71966,-105.67819

A cross-river cable is visible from highway 63 near the Pecos River Keeper sign posted at the downstream boundary of the Tres Lagunas subdivision. There are two signs on cable mid-river facing downstream. The steel cable is 24” above water at 30cfs flow. The Tres Lagunas subdivision downstream boundary is posted with “Private River” signs next to the highway.





**4. Cable at downstream boundary of the Kinney tracts: 35.6652, -105.68602**

This cross-river cable visible from river 500' upstream of mile marker 13 Highway 63. Known roadside river access point for short paddle down to Upper Dalton fishing access area. One sign on cable, facing downstream mid-river. It is suspended between two large riverside boulders 36" above the water surface at 30cfs flow.



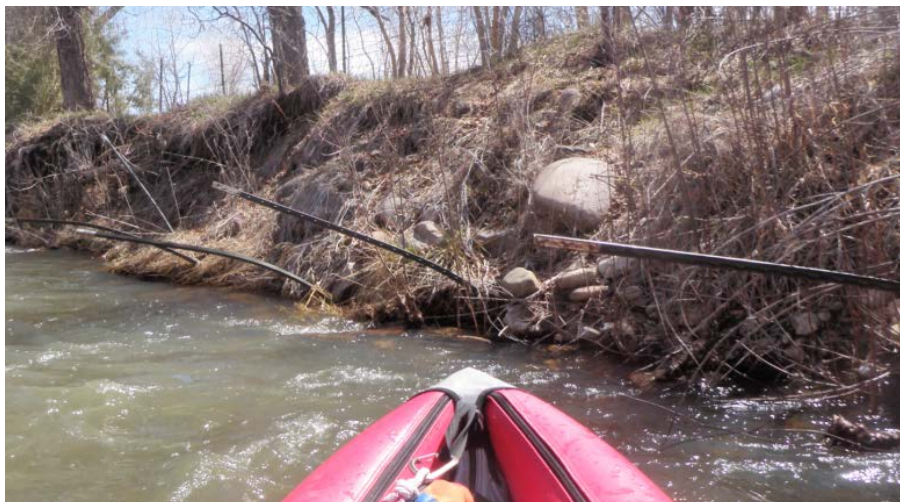


## UPPER PECOS RIVER, Pecos to San Ysidro

Steel posts projecting horizontally into the Pecos River and two hazardous river fences that require portage or can be passed in a boat only with assistance are described in complaint cases 5 through 7. They are located at the three upper red dots on the map below.



- 5. Unknown Owner.** Several T-Bar posts are angled into current from river right shore at water/boat level. This location is shown with the uppermost red dot labeled "Jetty jacks" on the Upper Pecos River map, upstream of Pecos, New Mexico. These posts are a very dangerous entrapment hazard for boats and paddlers particularly for high water conditions when the posts would be mostly submerged.





## DOWNSTREAM OF PECOS

6. This complaint includes two cross river barbed wire fences downstream of Pecos, New Mexico. Both are located most upstream property of the Royal Oaks subdivision believed to be controlled by Edward T. Garcia, a member of the State Game Commission, Respondent. Our inspection on September 15 showed both fences had been removed by or for the high water this year. The fences were strung out in the water along the bank. The second fence was the same.

**Garcia Sheliah P Trust.** A cross-river posted barbed wire fence is located immediately below the town of Pecos. It appears to be at the upstream property boundary of the Garcia Trust lot. The fence could entrap and drown a paddler without the skills to stop in the swift current.





7. **Garcia Sheliah P Trust.** A second hazardous fence in this river segment is located not far downstream as illustrated in the area map above. The photo shows the fence is not far downstream of the vehicle bridge.



## UPPER RIO CHAMA, Chama, NM to State Highway 95 bridge

The red dots in the map below show the location of one low cable and four hazardous cross-river fences, numbered 8 through 12, below. Two fences marked with red dots are not included in this complaint.





8. **The Upper Rio Chama at the upstream boundary of Trout Stalker Ranch**, believed to be owned by Dan Perry, is blocked by a stout cross-river cable just above or dragging at the river surface, depending on river level. The cable blocks the river and is not flanked by fences on either side. Large no-trespassing signs hang from the cable. Trout Stalker Ranch, upon information and belief, provides improved habitat and food for wild trout in the public river behind a barrier for the exclusive use of patrons.

The yellow no trespassing sign in the photo below is identical to signs posted at the Hersh property on the Pecos River in 2019 and numerous signs now posted along the highway right-of-way associated with the Case #1 properties. A public access to the Rio Chama is immediately downstream of Trout Stalkers Ranch. It cites operation of watercraft .

The downstream boundary of Trout Stalkers Ranch is marked by a cable far above the river that is posted with a different no trespassing sign. A public river access is immediately downstream. Chama Troutstalkers, LLC. was an Intervenor-Respondent in the NM Supreme Court public stream access litigation.





- 9. Gonzales, Mary Ellen Burns.** A diagonal fence across private property transitions to river fence remnants in the water. It is on a property line and was not present in April 2023, but is known to be blown out by high water and subsequently replaced.





**10. Martinez, Tony L. and Carla L upstream boundary with Gonzales, Mary Ellen Burns Property.** This fence is posted with signs that require a recreationist to stop and not touch the banks. The fence crosses in a whitewater drop. A paddler cannot see if the drop is clear until too late to avoid if it is. Upstream, the fast water without river features (eddies) make it very hard to stop. Safe passage requires a paddler to stop far upstream, then walk down the river right bank to see if the fence is passable. A portage is required if the fence in the drop is intact.





**11. Martinez , Patrick D., and Rose L. downstream boundary with Burns Tract Farm.**

This boundary is marked with a very dangerous barbed wire fence in swift current with no landing. The two photos below are upstream and downstream of the fence. Safe passage requires landing above thick brush on river left for a mandatory portage of about 100 yards. The photos below are in upstream to downstream order.





- 12. Sanchez Family Trust.** This fence is not on a property boundary according to OnX. The river has two channels at this location. The left channel is passable in kayaks, but not a raft, under a cross-river cable. This dangerous fence across the right channel, below, could be deadly to an unsuspecting paddler who elected to take the right channel.



### UPPER RIO CHAMA, State Highway 95 bridge to El Vado Reservoir

Two dangerous fences cross the river just downstream on the beautiful river reach named the Big Mama Chama. Locations are shown below.

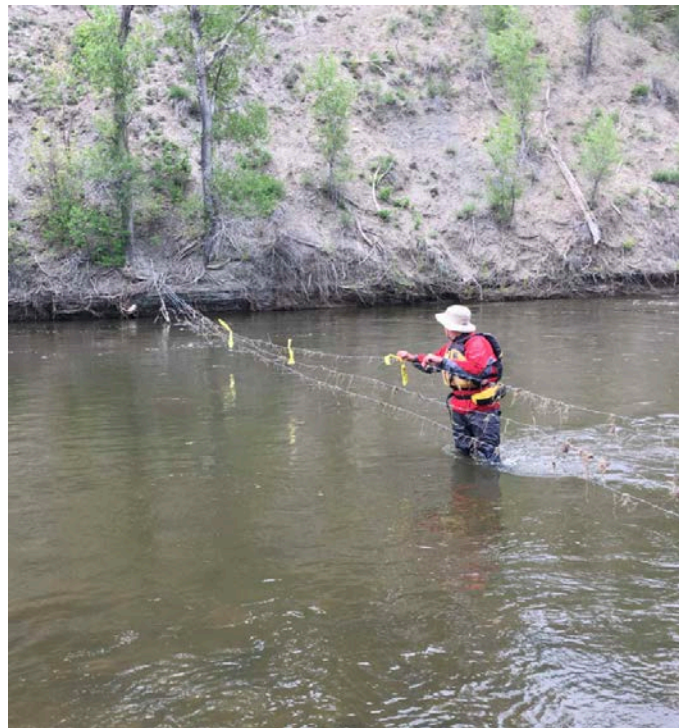
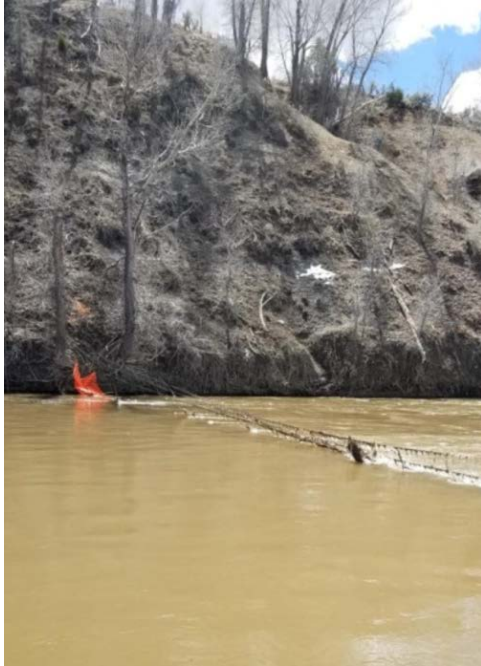




**13. Casados, Russell P. (Trustee) Casados Revocable Trust boundary with Manzanares, Antonio J. and Molly.** A very dangerous, almost invisible-to-approaching-paddlers fence is in current around a right-hand bend at the end of the long, fast “quarry” rapid. River-right brush has grown thick and obscures the fence/gate, making the fence hard to see. The thick brush makes it hard to stop and get off the river above the fence for the mandatory portage. Even paddlers who are familiar with this fence have a hard time seeing it because most of it is in the water. Two invisible-from-upstream barbed wire strands are attached only on either side of the river at a height that would be at head or chest level to a kayaker. The fence cannot be photographed from upstream because of brush, swift current, and the curvature of the river.



**14. Unknown owner.** This fence is in poor repair, in the water., and requires a mandatory portage The fence in the river is not flanked by functional fences on either side.



This concludes the description of hazardous fences on the Upper Pecos River and the upper Rio Chama above El Vado Reservoir. Adobe Whitewater Club members know of other dangerous fences and intend to supplement this complaint to include other reaches and rivers.