



Northern New Mexico Group
Rio Grande Chapter
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August 7, 2019

Dear Governor Michelle Lujan Grisham,

The “privatization” of New Mexico’s streams and rivers is an important state issue that your good offices and the State Game Commission could help resolve.

The former Game Commission enacted a rule change, in 2017, that allows private landowners to petition the N.M. Department of Game and Fish to classify streams and other surface waters as “non-navigable”, and therefore closed to public access (unless by written permission). Elaborate legal arguments by lawyers on behalf of a few landowners were used to emphasize the “constitutionality” of such a move, and the 2017 State (“trespass”) law, that supposedly enables landowners to deny access to “non-navigable” streams, was continually invoked.

We have encouraged this new Commission to take a historical look at the New Mexico Supreme Court (1945) ruling in the case of *State Game Commission v. Red River Valley Company*. That decision found that “the public may use streams and streambeds where they run through private property as long as the public doesn’t trespass across private land to access the waters, or trespass from the stream onto private land. “

The Supreme Court’s majority opinion stated that whether waters are navigable or not doesn’t determine whether they’re public.

The opinion further notes that the New Mexico Constitution states: “waters in every natural stream, whether perennial or torrential, belong to the public.” The court rejected arguments from private landowners that allowing the public to walk up streams and fish would amount to trespassing on their lands. Under such a finding,

the court said, “we could enjoy no fishing or recreational rights upon much of the public water of this state, although access thereto could be reached without trespass on the privately owned lands of another.”

Since then, three New Mexico attorney generals (Gary King, Tom Udall and Hector Balderas) have issued opinions that the court ruling means what it says: that people have a right to fish and use streams that cross private property as long as they don’t trespass to gain access.


A recent opinion by current Attorney General Balderas concluded that the New Mexico Constitution wouldn’t allow any interpretation of the 2015 “trespass” law, “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.”

Given the extreme importance of all surface water to New Mexico’s outdoor recreationists, anglers, and boaters, the thousands of Sierra Club members in northern New Mexico, urge the Commission to adhere to the precepts of the New Mexico Constitution, and to rescind the 2017 Rule.

In its place, a new rule could be proposed that re-affirms the above wording from the decision by Attorney General Hector Balderas.

Thank you for your continued work on behalf of New Mexico’s public natural resources.

Very truly yours,

A handwritten signature in cursive script that reads "Teresa Seamster".

Teresa Seamster
Chair
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