

# A BRIEF HISTORY OF NM PUBLIC WATERS ACCESS

1907

The Territorial Legislature of New Mexico declares that all waters “belong to the public and are subject to appropriation for beneficial use.”

1911

New Mexico adopts a state constitution that says “every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public.”

1945

The State Game Commission sues Red River Valley Co. for blocking public access to Conchas Reservoir. The case goes to the New Mexico Supreme Court, which sides with the Game Commission, saying, “The waters in question were, and are, public waters; and that the [landowner] has no right of recreation or fishery distinct from the right of the general public.” The decision has never been successfully challenged or overturned.

APR  
2014

New Mexico Attorney General Gary King issues an official opinion that concludes: "To summarize, the Supreme Court's decision in *Red River*, which has been the controlling law for nearly 70 years, leaves no doubt that the water in New Mexico streams belongs to the public and is subject to public's beneficial use for fishing and recreational activities. The public's right to enjoy the use of public waters is no different when those waters are located on or run through private property. The owner of property upon which a public stream is located ... cannot exclude others from fishing in the stream.”

AUG  
2014

Attorney General King writes to the State Game Commission and specifically asks the commission to “adopt regulation that will expedite the ability of the public to fish in public streams that flow across private lands.” The commission refuses.

2015

State legislature approves Senate Bill 226, which seeks to circumvent the stream access rights outlined in the constitution and *Red River Valley* decision. The new law, which passes the House by one vote, gives the State Game Commission the authority to declare New Mexico waters as “navigable” or “non-navigable.”

2016

New Mexico Attorney General Hector Balderas issues an opinion stating, “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. In particular, the term 'non-navigable' in SB 226 cannot be applied to limit the public’s access to public waters. Under Article XVI, Section 2, the water of 'every natural stream' in New Mexico belongs to the public, whether it is navigable or non-navigable.”

2017

State Game Commission establishes regulations (based on SB 226) to prohibit public access to certain stretches of the Pecos, Chama, Penasco, Mimbres and Alamosa rivers, over the objections of New Mexico BHA and others.

NOV  
2018

NM BHA sends letter to Governor-Elect Michelle Lujan Grisham, asking that the State Game Commission overturn the stream access regulations adopted by the previous commission.

JUN  
2019

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NM BHA sends letter to the newly appointed State Game Commission asking that it overturn the new regulations that prohibit public access to sections of five rivers.

JUL  
2019

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The commission enacts a 90-day moratorium on the existing stream access regulation that allows sections of streams running through private land to be deemed non-navigable. They also agree to ask the attorney general's office for guidance on whether the regulation comports with the state constitution.

SEPT  
2019

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The State Game Commission agrees to conduct a thorough review of the existing stream access regulation to determine whether it comports with the New Mexico Constitution.

SEPT  
2019

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The New Mexico attorney general issues a memo to the State Game Commission that concludes, "Any language [in the new regulation] which attempts to prohibit access to the public waters of New Mexico is unconstitutional and unenforceable."

DEC  
2019

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State Game Commission Chairwoman Joanna Prukop, a 25-year wildlife management veteran and champion for transparency and public process, is removed from her seat by the governor with no explanation. Prukop has said she was removed for her role in attempting to resolve issues with the current stream access regulation.

JAN  
2020

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The governor names Sharon Salazar-Hickey, a Los Alamos attorney who has no experience in wildlife management and doesn't hunt or fish, as Joanna Prukop's replacement as Game Commission chairwoman.

MAR  
2020

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The New Mexico Department of Game and Fish files a lawsuit in Santa Fe District Court against the State Game Commission over its troublesome "non-navigability" rule, seeking clarity as to whether the current rule is indeed unconstitutional and unenforceable as noted in the AG's Sept. 2019 memo.

MAR  
2020

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A coalition of outdoor groups -- the New Mexico Chapter of Backcountry Hunters & Anglers, New Mexico Wildlife Federation and Adobe Whitewater Club of New Mexico -- petition the New Mexico Supreme Court to invalidate a State Game Commission rule that purports to allow landowners to block the public from accessing rivers and streams that flow across private property.

MAR  
2022

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The New Mexico Supreme Court rules unanimously in favor of public stream access, saying the State Game Commission regulation adopted in 2018 is unconstitutional, that "certificates of non-navigability" previously issued to landowners and used to prohibit public access are invalid, and – as the same court said in 1945 – that the public has the right to use any stream in the state for recreational purposes provided that individuals do not trespass to reach or leave the stream. In a special meeting held shortly after the decision, the Game Commission votes unanimously to repeal 19.31.22 NMAC, the Landowner Certification of Non-Navigable Water Rule. The ruling shouldn't have been a surprise, said NMBHA spokesman Joel Gay. "New Mexicans have always had this right of access, but for decades streamside landowners and NM Game and Fish have been saying otherwise. Our thanks to the Supreme Court for reminding everyone of the facts."

APR  
2022

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Chama Troutstalkers LLC and other landowners in the case ask the NM Supreme Court for a rehearing of their March decision. The original petitioners – NMBHA, Adobe Whitewater Club and NM Wildlife Federation – urge the court to deny the petition, and later in April the Court agrees, denying the landowners’ petition.

SEPT  
2022

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The New Mexico Supreme Court issues its final ruling on stream access: “We hold that the public has the right to recreate and fish in public waters and that this right includes the privilege to do such acts as are reasonably necessary to effect the enjoyment of such right.”

OCT  
2022

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Chama Troutstalkers LLC and Z&T Cattle Company LLC appeal the New Mexico decision to the Supreme Court of the United States. Officially, they file a “petition for certiorari,” which is a formal request asking the Court to take up the case. The Court gets thousands of such requests every year but accepts only a small number. In their petition, the landowners file suit against the three groups that won the New Mexico case -- NM Backcountry Hunters & Anglers, the Adobe Whitewater Club and NM Wildlife Federation – and claim that striking down the New Mexico stream access regulation was a “taking.”

JAN  
2023

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NMBHA and its co-defendants ask the Supreme Court to reject the landowners’ petition. We have enlisted a California law firm, O’Melveny & Myers LLC, to lead our defense. Our New Mexico legal team was not credentialed at the Supreme Court but will continue to work alongside the California team, which also includes students from Stanford Law School – all of whom are working pro-bone. SCOTUS is expected to take up the landowners’ petition in late February and will decide whether or not to take the case. If they reject the petition, that’s the end of the road, and the public’s right to access streams in New Mexico for recreational use will stand.

MAR  
2023

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On Feb. 27, 2023, the Supreme Court of the United States announced it would not hear an appeal of our stream access case, meaning opponents of stream access have nowhere else to go. The public has won! This means that anyone who can legally access a stream in New Mexico can fish or float those waters providing they don’t trespass across public property when they leave the stream. This is a huge victory for New Mexico Backcountry Hunters & Anglers and our partners in this effort – the New Mexico Wildlife Federation and Adobe Whitewater Club. The fishing and boating public owes a huge debt of gratitude to our attorneys, Gene Gallegos and Seth Cohen, who volunteered their time and legal expertise to guide us through to this final stage. We cannot thank them enough.

