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RIVERS OF NEW MEXICO

THREAT: Loss of federal stream and wetland protections

STATES: New Mexico

AT RISK: Clean water, wildlife habitat, recreation, agriculture, cultural resources

SUMMARY

New Mexico's rivers are its lifeblood, providing clean drinking water, irrigation, fish and wildlife habitat, and rich cultural resources. But a recent U.S. Supreme Court decision, *Sackett v. EPA*, has stripped federal clean water protections for small streams and wetlands nationwide—arguably harming New Mexico the most out of all the states. This federal action has removed federal clean water protections for the vast majority of the state's streams and wetlands—opening the door to pollution and habitat damage, with harmful downstream impacts to rivers such as the Rio Grande, Gila, San Juan, and Pecos.

To address the gap in clean water protections left by the Supreme Court decision, New Mexico must secure durable funding to establish a state-led surface water permitting program to protect its rivers, streams, and wetlands. The state's heritage, environment, people, and economy depend on it.

THE RIVER

From the Upper Rio Grande to the Gila River, New Mexico's rivers and streams are the lifeblood of the state's economy, environment, cultural history, and quality of life. In addition to sustaining life for plants and animals, rivers and streams provide a source of clean drinking water for a majority of New Mexico's population. Water used to grow healthy food, including New Mexico's world famous chiles, comes from rivers and streams. Clean water from rivers and streams is essential for New Mexico's Acequias and community ditches, which are integral to New Mexico's traditions and economy. A large portion of the state's multi-billion-dollar recreation economy (rafting, fishing, boating, and hunting) is dependent on healthy rivers and clean water.

New Mexico's rivers, streams, and wetlands are a critical part of the culture and way of life for the diverse communities who call the state home. New Mexico's Indigenous communities, including 23 sovereign Pueblo and Tribal governments, have stewarded these lands and waters since time immemorial, and remain integral to protecting the waters on which all New Mexicans depend.

THE THREAT

A recent U.S. Supreme Court decision, *Sackett v. EPA*, overturned decades of federal clean water protections for the vast majority of New Mexico's streams, and wetlands—with potentially devastating consequences to clean water, agriculture, acequias, economies, fish and wildlife habitat, and cultural resources.

The court decision scaled back national Clean Water Act safeguards to include protections only for “relatively permanent” streams, and wetlands with a “continuous surface connection” to these protected streams. This means streams that only run during the rainy season or for periods of the year after snowmelt—which is very typical in this arid state—no longer have federal protections. The court also stripped

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protections for “isolated” wetlands—that is, wetlands not physically connected to other covered waters. In addition, waters found in New Mexico’s closed basins, which represent 20% of land area of the state, are also left federally unprotected due a previous Supreme Court decision in 2006. These rulings fly in the face of established science and ignore the value that small streams and wetlands have to their broader watersheds, communities, and economies, particularly in places with dry climates like New Mexico.

Permits that regulate pollution and mitigate damage to waterways and wetlands from

certain wastewater treatment plants, mines, industrial sites, and development projects may no longer be required for many of the state’s waters under the federal Clean Water Act. Without a state permitting program, the majority of New Mexico’s streams and wetlands would lack protection.

Despite the state’s commitment and proven record of protecting its clean water and remarkable natural resources, the new threat to New Mexico is real. This is because New Mexico’s state surface water permitting program is not yet in place to ensure its rivers are appropriately protected.

There is good news: New Mexico is committed to protecting clean water. Governor Michelle Lujan Grisham has been a vocal advocate for clean water protections and publicly opposed the U.S. Supreme Court decision. The New Mexico Environment Department, under the governor’s leadership, has begun building the foundation of a state permitting program. The legislature and the governor solidified this support by appropriating \$7.6 million in the 2024 legislative session to set up a state-led program and for shared infrastructure with the existing groundwater permitting program. Importantly, New Mexico’s definition of “Waters of the State” is more comprehensive than the federal definition and can eventually protect all of the state’s waterways, including isolated wetlands and small streams, when a state program is established and funded.

WHAT MUST BE DONE

The state of New Mexico needs strong public support to develop, fund, and implement a state surface water permitting program to protect the rivers, streams and wetlands that lost federal protections due to the U.S. Supreme Court ruling. The public has an opportunity to influence the development of this program when the New Mexico Environment Department issues a draft rule for the state surface water permitting program in the fall of 2024. Public participation during the rule comment period and hearing process will be necessary to ensure a program that meets the needs of New Mexico’s water resources and communities. Significant funds were secured in the 2024 session to help set up this program, but the work is just beginning. For the state of New Mexico to establish and implement a program that protects all of the state’s rivers, streams, and wetlands, including those still protected by EPA, state legislation and additional funding will be needed.