



New Mexico Wildlife Federation  
3620 Wyoming Blvd. NE ste 222  
Albuquerque, New Mexico 87111  
[nmwildlife@nmwildlife.org](mailto:nmwildlife@nmwildlife.org)  
(505)299-5404

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**Testimony of Jesse Deubel**  
**Executive Director, New Mexico Wildlife Federation**  
**Water and Natural Resources Committee**  
**New Mexico State Legislature**

Dear Chair Sen. Elizabeth "Liz" Stefanics  
and, Vice Chair Matthew McQueen

Thank you for the opportunity to address your committee on the important issue of public access to the public waters of New Mexico.

My group, the New Mexico Wildlife Federation, was founded in 1914 by pioneering conservationist Aldo Leopold to serve as a voice for our state's anglers, hunters and wildlife. For more than a century, we have stood up for public access to our public lands and waters. That commitment continues, and it's what brings me before you today.

As things stand now in New Mexico, there's a disconnect between the clear and unambiguous letter of the law that our waters are public and the reality that your constituents face when they try to fish, wade, float or otherwise recreate on our public rivers and streams.

Many landowners across our state persist in fencing off rivers and streams with barbed wire and no-trespassing signs. Many landowners persist in maintaining barriers on public waters that pose a real risk of killing rafters or other boaters who may encounter them.

Some of the wealthiest landowners in our state are openly flouting the law by excluding the public from using public waters.

This must change.

The right of New Mexicans to fish, wade and otherwise recreate in New Mexico's public waters is nothing new. In fact, it dates back to time immemorial and has been recognized in turn over the centuries by each governmental authority to preside over these lands: the Native American, the Spanish, the Mexican and now, our own state government.

New Mexico very clearly declared the public's ownership of all public waters in the state in our state Constitution, ratified in 1912. **Article 16, Section 2 states, "The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state."**

The New Mexico Supreme Court has ratified the public's right to use public waters, even where they cross privately owned lands, explicitly in two separate rulings. The first was issued in 1945, in the case "State ex rel. State Game Commission vs. Red River Valley Co."

In that ruling, the NM Supreme Court held that the public had the right to recreate on the waters impounded by Conchas Dam, even though the lands underneath the water were privately owned.

**"Opportunities for enjoying general outside recreation, sports, and fishing, are recognized as one of the outstanding attractions of our state, as indeed they are of many of the states," the court majority ruled in 1945. "The invitation to enjoy these activities is urgently and constantly extended by this and other states similarly situated, and millions of dollars are spent by tourists from less attractive areas who have come to enjoy them."**

**Elsewhere, the court opinion states, "The small streams of the state are fishing streams to which the public have a right to resort so long as they do not trespass on the private property along the banks."**

Most recently, the New Mexico Supreme Court ruled on the public's right to use public waters in response to a legal challenge brought by the New Mexico Wildlife Federation, the Adobe Whitewater Club and the New Mexico Chapter of Backcountry Hunters & Anglers.

Our groups' legal challenge targeted a rule promulgated by the New Mexico State Game Commission that had purported to allow private landowners to get certificates from the commission certifying that if rivers and streams that flowed across the landowners' private property were non-navigable, the commission would state that they were "private waters" and closed to public entry.

The game commission rule, which went into effect in 2018, followed language passed by the New Mexico State Legislature and signed into law in 2015 that stated no one could access non-navigable public waters where they flowed across private property without the written permission of the property owner.

In March, 2022, in response to our groups' legal challenge, the New Mexico Supreme Court ruled that the game commission rule was unconstitutional and void. In its unanimous, written opinion, issued last September, the court stated that the question of whether rivers and streams are navigable has no significance in our state in determining whether the public has a right to

**“The question here is whether the right to recreate and fish in public water also allows the public the right to touch the privately owned beds below those waters. We conclude that it does,” the court stated in its ruling.**

Some of the landowners who had received certificates from the game commission purporting to declare waterways across their property as private asked the Supreme Court of the United States to review the state supreme court ruling. The landowners argued unsuccessfully that the state court ruling amounted to an unconstitutional taking of their property.

The issue is settled law in New Mexico: the public has a longstanding right to fish, wade and float on the public waters of the state provided they don't trespass on private lands to reach the water. Again, this public right is not some new invention. It comes down to us from the earliest pages of our state's history, through the tenures of Spain and Mexico on this land and up to the present day as an unbroken chain.

Granted, some very wealthy and powerful people in New Mexico don't like the fact that the waters of the state are public. They would much prefer to rely on their wealth and privilege to fence out everyday New Mexicans – your constituents. As a state, we can't allow that to continue.

Thank you again for allowing me to appear before you.

Sincerely,

Jesse Deubel  
Executive Director, NMWF