

## **Stream Access from the Paddle Sports Perspective**

**September 5, 2021**

By: Robert Levin, New Mexico State Director, (ACA) American Canoe Association, Canoe, Kayak, Raft, SUP

I have been involved in Paddle Sports since I was a young teen and have floated many of New Mexico's waterways both seasonal torrential and perennial flows. I now serve in the elected position of State Director for the American Canoe Association (Approximately 15,000 members) whose principle mission is:

- Instruction in safe paddle craft operation
- Paddle Craft Safety
- Stewardship/Conservation
- Paddle Craft Competition

The ACA is not a petitioner in the Stream Access litigation though we support those efforts. The New Mexico Department of Game and Fish Rule and the poorly managed implementations, has had a direct impact on both the safety and ability to float through many segments of rivers and streams which impedes our constitutional right to recreate on these waters.

Unlike other members of this panel who are not petitioners in the Stream Access litigation, the Upper Pecos Watershed Association represented by Mr. Adelo is.

### **There are many Published Conflicting and Misleading Statements in the Press and Websites**

Lesli Allison of the Western Landowners Alliance wrote in the "My View" of The Santa Fe New Mexican, June 17, 2021<sup>i</sup>

*(Quote) "Public access proponents would have you believe landowners are trying to close off public access to streams on private land. This simply is not true. In fact, it is just the opposite. Sportsmen are seeking to overturn decades of laws and regulations to gain new places to fish and recreate."*  
*(End quote)*

In reality, it is true that access is being closed off, landowners on both certified and non-certified stream segments have closed off segments to rivers and streams that had been open and used regularly with the placement of dangerous

fences and barricades that often include threatening signage (See Exhibit A, and C). Most of these barricades are not meant for livestock containment. In some instances, concertina and single stranded barb wire, commonly known as “neck wires” are sometimes encountered. For paddle sports, we only want to safely recreate where we have traditionally and constitutionally been allowed as in the past.

Likewise, on the New Mexico Counsel of Guides and Outfitters website<sup>ii</sup>, there are multiple statements that contradict each other. Some of these statements have been authored and quoted by Kerrie Cox Romero in the Albuquerque Journal.

Statements in conflict by the New Mexico Counsel of Guides and Outfitters include the following that directly relate to paddle sports:

*(Quote) “We agree with the opponents of this law that the water of the state of NM belongs to the public. We have never wavered from this stance. If a waterway can be floated or fished from a boat without stepping onto the stream-bed than the individual has the right to recreate on the water” NMCGO (End quote)*

Conversely, in a more recent statement in their **Rumor Vs Fact** Section

*(Quote) “There is a move being made to give the general public access to recreate on all “**privately owned water-ways**” in the state of New Mexico.” NMCGO (End quote)*

If the constitution says “water belongs to the public”, How can one assert there are “**privately owned**” waterways?

### **State Parks Guide and Rights of Boaters “Exhibit D and E”**

In 1983 The New Mexico State parks Division of the then Natural Resources Department published “New Mexico Whitewater, A Guide to River Trips which promoted the popular river runs in the state. Four of the five segments which have been issued private certificates on the Pecos and Chama rivers are listed in the guidebook as Classic River runs.

Safety is a primary concern with the ACA and we teach about hazards, avoidance, risk evaluation and how to safely traverse these hazards. Scouting hazards and portage is the traditional method for hazard avoidance. Besides natural hazards,

in New Mexico we frequently encounter human-constructed hazards that require both scouting and portage.

- Dams
- Rock Weirs
- Barb wire both single strand (most dangerous) and multi strand stretched across waterways
- Concertina wire
- Pipe barricades
- Cables

Occasionally we encounter “paddle safe fencing” which allows the watercraft operator to safely pass through the boundary marker without the need for portage. (See Exhibit B)

It’s a difficult proposition to not touch the stream bank or bottom when forced into scouting and portaging. This is particularly true with man-made objects that force the water craft operator to violate trespass law. In many ways, this is legal entrapment. In our view it is incidental touching of the land required for safely traversing the navigational hazard.

These barricades pose an additional hazard, that of physical entrapment in the hazard itself. Should the operator of a watercraft become entrapped in a man-made barricade of wire or fencing, does the State of New Mexico, the Department of Game and Fish or the private landowner assume the liability?

### **Implementation of Private Segments Inspection? NMAC 19.31.22**

While there has been a call for increased enforcement of trespass law, nowhere has there been an inspection process to check on the implementation of privatized segments other than the inspection and placement of approved signage. No one is looking at barriers, additional signage or stream bed modification.

(Exhibit E and F) The Hersh Trust, on the upper Pecos, is a prime example of overreaching even the current certification rule. Not only have they erected dangerous barriers that include the previously mentioned concertina wire, they have also created signs that unlike the NMDGF rule and sign guidance that allows

watercraft operation, the verbiage allowing for that access was specifically omitted. Yet the sign cites the some NMSA rules as if the prohibition is correct. Additionally the Hersh Trust has, we believe, modified the streambed with manmade water features. To date in our research, we have not been able to find where any Federal or State permits were applied for or granted.

### **Outdoor Ethics Leadership**

Throughout the last year during the pandemic our outdoor spaces have encountered an extraordinary use by people who have no idea what outdoor ethics or how the behavior expected is different than going to a stadium sporting event.

Many of the outdoor associations and petitioners on both sides of the issue have been busy promoting stewardship and conservation initiatives. The ACA has partnered with a variety of organizations to perform “Cleanups” of public access areas. “See Exhibit E”

Government and NGO’s we have partnered can be found in (Exhibit F)

While cleaning up our open spaces is very important for all concerned, it does not address the root cause or provide a solution.

While living in the Dayton/Cincinnati Ohio area in 1989 -1991 I was the program director for a YMCA Conservation/Environmental Leadership program called “Earth Corp”. The program was organized through both public and private schools science departments and funded by grants from General Motors and the Junior League. Approximately 20 schools participated with around 200+ students.

On more than one occasion, parents would tell me how their children were organizing recycling and pre-cycling programs along with local conservation projects. Many of these participants grew up to be active leaders in Conservation and stewardship in their communities

I administer two Social Media Groups: New Mexico Trout Fishing and New Mexico Canoe, Kayak and SUP Paddlers. Together contain more than 10,000 members, most are residents of this state.

Last week in preparation for this presentation, I took a poll that simply asked the question, “Where and whom did you learn “**Outdoor Ethics**”?

- 81% of the respondents replied from family or friends
- 16% learned from NGO's like scouting or school

I am calling on the legislature to help promote policy and consider funding Educational Leadership Programming that would increase awareness, practice and promotion of Outdoor Ethics. This subject is missing from our New Mexico Society and is sorely needed.

Thank you for your time and attention.

---

<sup>i</sup> *Another side of the controversy over stream access* By Lesli Allison of the Western Landowners Alliance wrote in the "My View" of the Santa Fe New Mexican, June 17, 2021

<sup>ii</sup> NMC GO [Stream Access Law \(nmoutfitters.com\)](https://www.nmoutfitters.com/stream-access-law.html) <https://www.nmoutfitters.com/stream-access-law.html>