

2020 DIRTY WATER RULE AND WHAT IT MEANS FOR NEW MEXICO

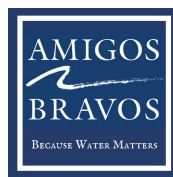


On January 23, 2020 EPA finalized a rule that drastically reduces the amount of waters that are protected under the federal Clean Water Act. This Dirty Water Rule has serious impacts for New Mexico’s waters and wetlands.

- **The 2020 Dirty Water Rule**, which is officially called the “Navigable Waters Protection Rule”, **would negatively impact New Mexico more than any other state in the nation.**
- It is likely more than **90% of NM Waters are left unprotected** under the Rule.
- The Rule **creates regulatory uncertainty** as definitions of “ephemeral”, “intermittent”, “perennial”, and “typical year” are subjective and not easily applied.
- **The proposed rule would REMOVE Clean Water Act protections for all ephemeral waters** and for **intermittent and perennial waters** that do not flow consistently to a Traditionally Navigable Water (TNW).
- **New Mexico is one of only 3 non-delegated states**, meaning that EPA administers and issues NPDES permits in NM. Unlike most other states, NM does not have a state program in place to control surface water discharges into state waters – **this means that there is now no program in place to control discharges to the majority of NM waters!**
- **The Gila River and other interstate waters would lose Clean Water Act Protections.** (The rule gets rid of interstate waters as a jurisdictional category, and since the lower stretch of the Gila runs dry it does not have consistent flow to a traditional navigable water).
- Important NM tributary streams such as **the Santa Fe River, Gallinas, and Rio Costilla** provide water for our acequias, wildlife and recreation, but do not always flow year-round. These waters need protection from unregulated dumping and pollution!
- **Wetlands that do not have direct surface connection to a jurisdiction water are left unprotected** (this is well over half of New Mexico’s wetlands).
- **20% of the state’s vertebrate wildlife** depend upon ephemeral and intermittent waters.
- The **drinking water of at least 280,000 people in New Mexico** is threatened by this rule.
- Other important New Mexico Waters like the **Rio Fernando, Comanche Creek, Tijeras Arroyo, Huertas Creek** may now be unprotected.

History of the Clean Water Act

- The federal Clean Water Act, passed in 1972, **has guided the transition from rivers that literally caught on fire to healthy watersheds** where species like the bald eagle and river otter once again thrive.
- **The Clean Water Act requires wastewater and industrial facilities to clean water before discharging into the nation's rivers.**
- **After Supreme Court decisions in 2001 and 2006, which waters were protected by the Clean Water Act was called into question.** These Supreme Court rulings made Clean Water Act protections for some waters that historically had been covered under the law uncertain.
- **The Obama Administration finalized a Clean Water Rule in 2015** that clarifies that some of the rivers, streams, and wetlands that fell through the cracks in the post-2001 confusion are indeed protected.
- **New Mexico, under Governor Martinez, joined several other states and legally challenged the 2015 Clean Water Rule.**
- **Governor Lujan-Grisham withdrew the state from this Martinez Administration lawsuit challenging the 2015 rule.**
- **The Trump Administration repealed the 2015 Clean Water Rule on October 22, 2019.**
- **On January 23, 2020 the Trump Administration finalized the “Navigable Waters Protection Rule” also known as the “Dirty Water Rule”.**
- **New Mexico's waters are now at risk from unregulated dumping and filling.**



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