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EPA water rule change called disastrous for New Mexico

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Edward Romero, mayordomo of the Acequia de las Jollas, opens the sluice gate to release water back into the stream in 2017. Gabriela Campos/The New Mexican

A majority of New Mexico's waterways and wetlands will lose federal pollution protections under the Environmental Protection Agency's final "U.S. Waters" rule unveiled Thursday.

Environmental groups, politicians and agency heads decried the Trump administration's decision, calling it disastrous for the state.

Gov. Michelle Lujan Grisham called the rule "an affront" to New Mexicans and "an absolute disaster for the state's water resources."

She added that her administration “will consider all legal options to prevent this rule from going into effect. This is far from over.”

Rachel Conn, a project manager at Amigos Bravos — a Taos-based water advocacy group — called the rule “draconian.”

“New Mexico is the hardest hit out of any other state by this final rule,” Conn said.

According to the New Mexico Environment Department, only 7 percent of New Mexico’s rivers and streams run year-round, meaning very few qualify outright for protection.

The “traditionally navigable waters” are the Canadian, Cimarron, Pecos and San Juan rivers, as well as the Rio Chama, the Rio Grande and Navajo Lake.

Interstate streams, groundwater connections and stand-alone groundwater are no longer considered “U.S. waters.”

Intermittent waters — those that are seasonal — and ephemeral waters — those that only appear during heavy precipitation — represent 93 percent of the states’ rivers and streams.

According to the rule, intermittent waters are protected, while ephemeral waters are not.

But determining which streams are ephemeral and which are intermittent isn’t always easy, said Alex Puglisi, an environmental compliance officer with the city of Santa Fe.

“I actually think it threw a lot of waters, wetlands and streams into ambiguity,” Puglisi said. “We have to see if there’s a subsurface connection that would make them protected, and we’ll have to do it on a case-by-case basis.”

New Mexico is one of three states that solely relies on the EPA to issue permits for dumping pollutants in surface water.

Puglisi said the state never applied to have primacy — the right to issue and enforce the permits. He said the state gets some money to assist the EPA with inspections. Without a state system for permitting, he said, New Mexico is left with the federal rule.

“The only way New Mexico could get around that is assume primacy and implement a program to protect ‘waters of the state,’ meaning those waters not protected under the EPA,” Puglisi said.

Charles de Saillan, staff attorney at New Mexico Environmental Law Center, said the uncertainty the rule causes and the resulting lack of protections for New Mexico waters will most likely result in lawsuits.

“A good chance we’ll be suing the EPA and the Army Corps of Engineers over this,” de Saillan said.

In September, EPA Administrator Andrew Wheeler announced the controversial move to roll back pollution limits in wetlands and smaller waterways that were introduced in 2015 by the Obama administration. The move was opposed by a number of groups, including the department’s own science advisers.

New Mexico Environment Department Secretary James Kenney said in a statement that the EPA failed to consult with his department after the agency submitted its comments on the draft rule.

“This federal administration’s self-proclaimed deregulatory agenda ignores sound science, states’ rights and most troubling, the EPA’s own mission to protect public health and the environment,” Kenney said.

The Obama-era rule applied to nearly 60 percent of U.S. waterways and aimed to add clarity and end decades of legal debate about which waters qualified for federal protection.

Mining, large agriculture and developers said the Obama-era rule was federal overreach.

Under former Gov. Susana Martinez, New Mexico joined 27 other states in suing the EPA, but it later withdrew from the lawsuit.

In December, 14 states formed a coalition and sued the EPA over the Trump administration’s decision. The lawsuit said the rollbacks “ignore science and the law and strip our waters of basic protections under the Clean Water Act.”

New Mexico has not joined that lawsuit. In an emailed statement, Matt Baca, a spokesman for state Attorney General Hector Balderas, said the office was looking at alternatives.

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