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## Environmental groups sue EPA over new water rule

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Three conservation groups sued the Environmental Protection Agency on Tuesday over its new navigable waters rule, which they contend would gut regulation of polluted streams and storm runoff flowing into major waterways such as the Rio Grande.

Taos-based Amigos Bravos, the New Mexico Acequia Association and Gila Resources Information Project filed a federal lawsuit challenging the EPA's new rule, which went into effect Monday.

The rule more narrowly limits waterways that fall under federal oversight, excluding as "ephemeral" storm-generated streams and tributaries that don't connect to another body of water.

It could lead to EPA nixing its oversight of heavily polluted runoff from Los Alamos County into the Rio Grande — a prime source of drinking water — and it might disqualify the Gila River from protection because that waterway runs dry before reaching the Colorado River, advocates say.

"The Trump administration has opened the pollution floodgates," said Rachel Conn, projects director with Amigos Bravos. "This 2020 dirty water rule protects the interests of polluters over the interests of the public, who rely on clean water for drinking, agriculture, recreation and cultural values."

New Mexico is disproportionately affected by this rule because the state has a large number of streams that flow only during wet times, Conn said. These ephemeral streams have historically been protected under the Clean Water Act, but the new rule leaves them unregulated.

Large, continuously flowing rivers such as the Rio Grande and the Pecos are protected, as are seasonal waterways that dry up in arid times of the year and flow in wetter cycles, said Charles de Saillan, an attorney with the New Mexico Environmental Law Center, which is representing the three advocacy groups.

But distinguishing ephemeral waters from seasonal ones can be problematic because New Mexico's weather can vary so much year to year, de Saillan said. Snowpack can melt earlier some years, and

monsoons can come later in other years, he said.

“It’s not clear exactly where the dividing line is,” de Saillan said. “It creates a huge amount of uncertainty.”

For that reason and others, the lawsuit calls for the court to vacate the EPA’s rule, he said.

Gov. Michelle Lujan Grisham and other New Mexico leaders have fiercely opposed the EPA’s effort to reduce federal water protections.

The state Environment Department has estimated that almost all the state’s surface waters could lose protection under the new rule.

EPA officials wouldn’t address the lawsuit or criticisms of how the rule could affect New Mexico’s waters. But in an emailed statement, an agency representative said a California federal court on Friday denied the request by 17 states — including New Mexico — to impose an injunction on the navigable waters rule.

“EPA and the Army [Corps of Engineers] developed the rule to protect the navigable waters and their core tributary systems for the entire country while respecting our statutory authority,” EPA spokeswoman Molly Block said. “The rule strikes the proper balance between state and federal jurisdiction and is designed to end the confusion that has existed for decades.”

However, New Mexico is already more limited than most states, de Saillan said. It is one of just three states that has no delegated authority from the EPA to regulate discharges of pollution into rivers, streams and lakes under the Clean Water Act, he said.

Water advocates say it’s important to retain federal pollution permitting of Los Alamos runoff, which tests have shown contains toxins such as mercury, copper, nickel, cyanide, radiation and polychlorinated biphenyls, commonly known as PCBs.

The Environment Department has pegged PCBs, a carcinogen, at 14,000 times the level deemed safe for human health in Sandia Canyon and 11,000 times the limit in Los Alamos Canyon.

The EPA agreed to establish a Los Alamos pollution permit in December after Amigos Bravos argued the agency had failed to address its 2014 petition requesting federal oversight of the toxic runoff.

In other areas, farmers could lose federal protection of water sources they depend on, said Paula

Garcia, executive director of the New Mexico Acequia Association.

“We rely on clean water to grow crops and raise livestock, to provide locally grown food for families, and to support agricultural livelihoods in our communities,” Garcia said.

Toward the south, the Gila River, a hub for nature lovers, hikers, anglers and diverse wildlife, could become degraded under this rule, de Saillan said.

Federal oversight would evaporate on the polluted tributaries draining into the Gila from upstream mine operations, he said.

The Gila itself might lose protections because it’s an interstate waterway and is not continuously flowing, he said.

“It is horrifying that a New Mexico river as important as the Gila is left unprotected by this rule,” said Allyson Siwik, Executive Director of Gila Resources Information Project. “Irrigators and the growing recreation-based economy of southwestern New Mexico are dependent on clean water flowing in the Gila.”

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Reporter