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New Mexico Game and Fish suit seeks to clarify state waterway rules

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New Mexico Game and Fish Director Michael Sloane is asking a state District Court to decide whether and under what circumstances private landowners can prohibit people from fishing in public waterways that flow through their property.

Sloane filed a complaint for declaratory judgment this week against the State Game Commission, which creates the rules the Game and Fish Department enforces. The suit says language in a waterway rule conflicts with the state constitution, creating confusion for the agency when it comes to enforcing legal rights.

The lawsuit — filed Wednesday on Sloane’s behalf by Gov. Michelle Lujan Grisham’s attorney, Matthew L. Garcia — says the commission created a process in which landowners could apply to have waterways on their property designated as nonnavigable and ban the public from using them. The suit argues the rule is at odds with the state constitution, which says, “the unappropriated water of every natural stream, perennial or torrential,” within the state belongs to the public.

“Given the lack of clear legal guidance as to whether landowners may lawfully exclude members of the public from accessing waterways flowing through private property,” Garcia wrote in the complaint, “the Department Director has been placed in the untenable position [of] enforcing competing and undefined legal rights.”

At the heart of the issue, according to the lawsuit, is the definition of “nonnavigable public waters.”

“They need a definition because they are not able to enforce the rules,” Judy Robinson, a spokeswoman for the Governor’s Office, said Thursday.

The term “nonnavigable waters” also has been an issue in debates over the federal Clean Water Act, centering on which waterways are subject to federal enforcement of the law.

But Rachel Conn, projects director for the statewide water conservation organization Amigos Bravos, said the issues are not related.

“It’s totally different and so confusing to the public, it should be titled differently,” Conn said. “The term is being applied for a completely different reason in a completely different regulatory context.”

Sloane did not return a call seeking comment on the lawsuit.

James Pitman a spokesman for the state Game and Fish Department, said neither the department nor the commission could comment on the pending litigation.

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