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**New Mexico Supreme Court Opinion Spells Out Public's  
Right to use Public Water Flowing Over Private Property**

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SANTA FE, NM – The New Mexico Supreme Court on Thurs., Sept. 1, reaffirmed the longstanding right of New Mexicans to walk or wade on the streambeds of water that flows over privately owned lands for fishing or other recreation.

“We hold that the public has the right to recreate and fish in public waters and that this right includes the privilege to do such acts as are reasonably necessary to effect the enjoyment of such right,” the court concluded in its unanimous opinion.

Thursday's written opinion follows the court's action in March, when it unanimously threw out a New Mexico State Game Commission rule that purported to allow landowners to block public access to public waters.

The court acted on the stream access issue in response to a legal challenge to the game commission rule brought by the New Mexico Wildlife Federation, the Adobe Whitewater Club and NM Chapter of Backcountry Hunters and Anglers

Since the game commission rule went into effect in 2017, the commission had granted five applications from out-of-state landowners to certify waters as "non-navigable" on New Mexico waterways, including stretches of the Rio Chama and Pecos River. After securing the certifications, landowners denied public access to the waters, in some instances placing fences across the rivers that prevent boating access.

In Thursday's opinion, the NM Supreme Court noted that it already had addressed the public's right to access the waters of the state in its 1945 landmark case, *State ex rel. State Game Commission v. Red River Valley Co.*

In the 1945 case, the court recognized the public's right to use streams and streambeds where they run through private property as long as the public doesn't trespass across private land to access the waters, or trespass from the stream onto private land. The court noted that under the Indian, Spanish and Mexican law that governed New Mexico before statehood, everyone had the right to fish in streams.

Thursday's ruling states explicitly that the public's right to recreate and fish in public water carries with it the right to touch the privately owned streambeds below the water.

"Walking and wading on the privately owned beds beneath public water is reasonably necessary for the enjoyment of many forms of fishing and recreation," the opinion states. "Having said that, we stress that the public may neither trespass on privately owned land to access public water, nor trespass on privately owned land from public water."

The ruling states that "the scope of the public's easement includes only such use as is reasonably necessary to the utilization of the water itself and any use of the beds and banks must be of minimal impact."

The opinion also noted that many other states in the West have recognized that public ownership and use of water is distinct from streambed ownership.

Scott Carpenter, president of the Adobe Whitewater Club of New Mexico, said Thursday that New Mexico paddlers love the state's rivers and streams.

"We are grateful to live in our beloved multicultural state and to paddle its beautiful rivers," Carpenter said. "The court unanimously affirmed the public's constitutional stream access

rights, derived from rules and principles that long preceded statehood.”

Carpenter expressed thanks to Santa Fe lawyers Gene Gallegos and Seth Cohen for their representation of the groups in the legal challenge. He also thanked partners and supporters including American Whitewater, the New Mexico River Outfitters Association, New Mexico Wild, the New Mexico Paddlers Coalition, Senators Tom Udall and Martin Heinrich, and Joanna Prukop, former State Game Commission chair.

“We stand against trespass and littering,” Carpenter said. “If a river needs a clean-up, let us know at [adobewhitewater.org](http://adobewhitewater.org). We will organize a clean-up.”

Joel Gay, former chairman and policy advisor with the New Mexico Chapter of Backcountry Hunters & Anglers, said the group is happy to see Thursday’s decision, but said it shouldn’t come as a surprise to either anglers or landowners.

“In 1945, the New Mexico Supreme Court issued much the same opinion — that all waters in our state are owned by the public and may be used for fishing, boating and other recreation provided the public doesn’t trespass over private property to enter or exit the stream,” Gay said. “New Mexicans have always had this right of access.”

John Crenshaw, board president of the NMWF, said the court ruling unequivocally reconfirms the historically well-established

right for the public to recreate in public waters, including the streambeds and banks of waters flowing through private land. He said now's the time for everyone, – fishers, boaters and other recreationists, landowners, outfitters, the State Game Commission, Department of Game and Fish, governor and legislators – to acknowledge that reality and transition into it.

“Going forward, we have to evaluate existing statutes, rules and policies to see what's applicable and where new ones may be needed to create a workable system that protects both public and private rights,” Crenshaw said. “The NMWF looks forward to engaging in that conversation with stakeholders across the spectrum of the issue, and is grateful to the NM Supreme Court for the clarity of its decision.”