From: **Hattie Johnson, American Whitewater** hattie@americanwhitewater.org
Subject: New Mexico Supreme Court Affirms Constitutional Right to Paddle Rivers!
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AMERICAN WHITEWATER

New Mexico Supreme Court Affirms Constitutional Right to Paddle State's Rivers and Streams

Club,

Last week in a very big win for river access, the New Mexico Supreme Court unanimously ruled that the State Constitution does not permit New Mexico's waterways to be "privatized" and sealed off from public access. The lead petitioner on the case, Adobe Whitewater Club (AWC), is an affiliate

Whitewater Club (AWC), is an affiliate club of American Whitewater. AWC and co-petitioners from the New Mexico Wildlife Federation, and the Backcountry Hunters and Anglers New Mexico chapter, were represented in this case by Santa Fe based attorneys Gene Gallegos and Seth Cohen. AWC and AW, in addition to the New Mexico Rivers Outfitters Association and American Canoe Association are founding members of the New Mexico Paddlers Coalition, a group who has worked diligently on overturning this stream privatization effort since 2016.

After a one-hour hearing and 15 minutes of deliberation, Chief Justice Vigil announced that all five justices agreed the issue was of "great public interest," the Petitioners had standing, the Game Commission rule is unconstitutional, and all certificates issued to the privatizers are void. The Court issued a prohibitive writ of mandamus to the State Game Commission. The State Game Commission met in an emergency meeting immediately following the Court's decision and rescinded the offending privatization rule.

The five river privatization certificates voided had authorized landowners closure of boatable sections on the Upper Rio Chama and the Upper Pecos River. On March 2, 2022, the

Pecos River. On March 2, 2022, the Court issued this Order.

This Supreme Court decision affirmed New Mexican's constitutional right to paddle all of the state's rivers. The water in New Mexico's rivers and streams belongs to the public. The Court said rivers are not for the exclusive benefit of private landowners. Rivers and their public users have an easement.

"Paddlers are very pleased that the New Mexico Supreme Court ruled that New Mexico's rivers and streams are for the enjoyment of all. We look forward to removal of threatening signage and the hazardous river barricades that were erected to prevent travel down river," said Sherry Barrett, Chair of New Mexico Paddlers Coalition. "Our rivers and streams are the lifeblood of New Mexico and will continue to be enjoyed by all New Mexicans and visitors to our state."

"New Mexico's rivers and streams are rare and precious resources that all New Mexicans are entitled to enjoy," said Scott Carpenter, President of the Adobe Whitewater Club. "This access is part of New Mexico's heritage. The NM Supreme Court unanimously ruled that the public has a long-standing constitutional right to recreational uses of these rivers and streams. That right

of these rivers and streams. That right includes contact with the streambed and banks that is incidental to recreational use of the water. The court ruled it is unconstitutional for private landowners to fence the public out."

New Mexico's outdoor recreation economy supports 33,500 jobs and $1.2B of income. Today's decision ensures that the residents and visitors of New Mexico can access the rivers that provide those recreational opportunities. Paddlers from across the country travel to enjoy New Mexico's unique and beautiful rivers and we are happy to see that their rights to do so are being upheld.

"I'm thankful that the Game Commission rule will no longer be a barrier to our state's policy of developing a robust river touring component to our outdoor recreation economy." said Steve Harris, director of the New Mexico River Outfitters Association.

The paddling community recognizes and respects the rights of landowners to preclude trespass on private land bordering the river. We are dedicated to working with landowners to ensure all our natural resources are protected.

The New Mexico Paddlers Coalition's

mission is to protect and improve access to New Mexico's rivers and streams. To support our mission, we cooperate with individuals, government agencies, and other non-governmental organizations to promote river conservation; provide leadership in outdoor ethics and education; support stewardship initiatives; and promote safety.

American Whitewater is thankful to the amazing lawyers, great partners, New Mexico Paddlers' Coalition, New Mexico paddling community at large and especially AWC members. We are so pleased to have won this most recent public stream access victory for all!

Sincerely,

Hattie Johnson

and the NM Paddlers Coalition and the entire team at American Whitewater

Hattie Johnson
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Utah Supreme Court Allows Public Waters Access Act to Stand

From the Utah Stream Access Coalition:

Salt Lake City, Utah –

Today's decision by the Utah Supreme Court ends a thirteen-year effort by the Utah Stream Access Coalition (the "Coalition") to overturn the Public Waters Access Act of 2010 (the "PWAA") and restore public access to Utah's non-navigable rivers and streams. The Court ruled that the public's access to these waterways, which the PWAA took away, is not rooted in or protected by the Utah State Constitution. Accordingly, the PWAA will stand.

While the Coalition is disappointed in the decision, it remains steadfast and measured in its mission. Today's decision ends only one of several avenues by which the Coalition aims to restore public access to Utah's rivers and streams. It will continue its efforts to have the State identify navigable waterways and declare them open to public recreational use, as it did successfully on the upper Weber River in 2017. And the Coalition will continue to advocate for the repeal and/or amendment of the PWAA, which, contrary to its name, restricts the public's ability to recreate on over 2,700 miles of Utah's rivers and streams that comprise some 43% of Utah's fishable waterways.

In 2015, the Coalition convinced Utah's Third District Court that the uppermost 40 miles of the Weber River met the test of navigability based on evidence that the river was used for commercial purposes prior to Utah becoming a state. That ruling, which was affirmed by the Utah Supreme Court in 2017, means that the public has a right to use the beds and banks of the upper Weber River – and other navigable rivers in the State – for lawful recreational purposes, in perpetuity.

The Coalition is committed to the principle that the waters flowing in all of Utah's rivers and streams are owned by the public and therefore members of the public should have the right to make use of such waters for lawful recreational purposes, regardless of whether they are navigable or who holds title to the lands beneath them.

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