objectives contravenes the public trust doctrine, it is entitled to proceed. In any case, and as established, the Walker River Decree Court cannot simply ignore its obligations under the doctrine because in application the facts are complicated. *See Ill. Cent. R.*, 146 U.S. at 453 ("The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters . . . than it can abdicate its police powers in the administration of government and the preservation of the peace.").

Bearing all this in mind, I do not deem trivial the concerns of Basin rights holders regarding finality, or deny that their reliance on prior allocations of Basin waters may be substantial. To the contrary, such concerns should enter into any reexamination of authorized diversions in the Basin undertaken by the Walker River Decree Court according to the public trust doctrine. *See Audubon*, 658 P.2d at 729. But, under our system of water rights, a prior appropriation is never permanent—even vested rights are granted only to the extent their holders do not over-appropriate or waste water. *See Desert Irrigation, Ltd. v. State*, 113 Nev. 1049, 1059, 944 P.2d 835, 842 (1997). Accordingly, the existence of such appropriations cannot be said to entirely preclude the Walker River Decree Court from addressing public trust concerns. *See id.* ("It is clear that some responsible body ought to reconsider the allocation of the waters of the . . . Basin. No vested rights bar such consideration.") (footnote omitted).

III.

Based on the discussion offered above, I would answer the Ninth Circuit's first question as follows: The public trust doctrine is one part of Nevada's integrated system of water laws, and assuming the truth of the facts presented, the doctrine protects Walker Lake from harm caused by diversions of Basin waters, whatever the cause, and that this interest must

be cast into the balance in managing the Walker River Basin, even though doing so may impinge on historical practices in utilizing vested water rights. I recognize that my response to the Ninth Circuit's first question begs an answer to its second question, which the majority declined to answer—namely, "If the public trust doctrine applies and allows for reallocation of rights settled under the doctrine of prior appropriation, does the abrogation of such adjudicated or vested rights constitute a 'taking' under the Nevada Constitution requiring payment of just compensation?"

In *Audubon*, the California Supreme Court offered the definitive discussion of the delicate balance an independently supervised public trust doctrine helps strike in an integrated system of water law. *See Audubon*, 658 P.2d at 727. With regard to the powers of the legislature and authorized executive agency, the California court noted that they necessarily have "the power to grant usufructuary licenses that will permit an appropriator to take water from flowing streams and use that water in a distant part of the state, even though this taking does not promote, and may unavoidably harm, the trust uses at the source stream." *Audubon*, 658 P.2d at 727. Indeed, the court admitted that "[t]he population and economy of [a] state depend upon the appropriation of vast quantities of water for uses unrelated to in-stream trust values." *Id.* But weighing against these economic considerations is the truth, demonstrable even by the precipitous decline of Walker Lake, that "an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests." *Id.* at 728. Thus, the public trust doctrine requires that the state affirmatively reassess the availability of water resources, as necessary to protect the public interest,

"in light of current knowledge or . . . current needs," *id.*, and demand feasible accommodations as necessary.

In this case, Mineral County represents that the objectives of the public trust reassessment may be achieved in any one of several different ways. But importantly, whatever solution the Walker River Decree Court ultimately adopts, it would not demand the creation of a new and superior water right that would upset the prior "allocation of rights" and require a complete restructuring of Nevada water law, as framed by the majority. As discussed above, the limited factual record before this court indicates that the Basin waters are publicly held navigable or nonnavigable surface water tributaries, such that any holders of usufructuary rights in the waters acquired them subject to the public trust in the first instance. *See Mineral Cty.*, 117 Nev. at 247, 20 P.3d at 808 (Rose, J., concurring); *cf. Desert Irrigation*, 113 Nev. at 1059, 944 P.2d at 842 ("Indeed, even those holding certificated, vested, or perfected water rights do not own or acquire title to water. They merely enjoy the right to beneficial use."). Even the vested water rights at issue are only worth the maximum amount of water available for allocation in the Basin, which water source, according to the record before this court, is held in public trust. Thus, while enforcement of the doctrine could potentially alter the amount of Basin water available for private use—as Mineral County points out, just as "any other natural constraint on the already variable availability of water to supply private appropriations"—it does not effect a reallocation of vested water rights. *Audubon*, 658 P.2d at 723 (stating that "while [a rights holder] may assert a vested right to the servient estate (the right of use subject to the trust) and to any improvements he erects, he can claim no vested right to bar recognition of the trust or state action to carry out its purposes").

Accordingly, even to the extent the Walker River Decree Court would act to protect Walker Lake pursuant to the doctrine by limiting the availability of Basin waters, it would not divest anyone of any legal title they previously held. *Id.* ("Except for those rare instances in which a grantee may acquire a right to use former trust property free of restrictions, the grantee holds subject to the trust . . . ."); *see also* Michael C. Blumm, *The Public Trust Doctrine and Private Property: The Accommodation Principle*, 27 Pace Envtl. L. Rev. 649, 650-51 (2010) (stating that "[c]ourts applying [this] doctrine demand all feasible accommodations to preserve and protect trust assets, but they do not attempt to eliminate private property. In fact, virtually all applications of the public trust doctrine leave possession of private property unchanged" and collecting cases (internal footnote omitted)).

The answer to the Ninth Circuit's second question then, is that enforcement of the public trust doctrine here does not result in a "reallocation of water rights," much less implicate the constitutional takings doctrine.

***

In sum, "[t]he public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state . . . ." *Kootenai*, 671 P.2d at 1094 (quoting *Audubon*, 658 P.2d at 723-24). And, as the majority recognizes, the duty in question arises from constitutional sources and inherent sovereign authority to protect the interests of "present generations [and] those to come." *Hassell*, 837 P.2d at 169. Moreover, "[t]he check and balance of judicial review" are essential components of the state's fiduciary duties, particularly where water resources are concerned, "provid[ing] a level of protection against

improvident dissipation of an irreplaceable res." *Id.* I therefore cannot agree that the Legislature can implicitly bestow these responsibilities on an executive agent, eliminating any judicial oversight. Even apart from this, Mineral County does not request a "reallocation of rights," only that the existing decree be managed in accordance with long-standing principles.

Accordingly, while I concur in part, I otherwise respectfully dissent.

Pickering, C.J.
Pickering

I concur:

Silver, J.
Silver

Introduction to the Navigability Toolkit©

AW's Mission

American Whitewater's mission is to conserve and restore America's whitewater resources and to enhance opportunities to enjoy them safely.

AW's Access Policy

American Whitewater seeks to ensure rights of public access to rivers and streams for recreational use by human-powered watercraft including kayaks, canoes, and rafts.

Introduction

River access has been a controversial issue since Roman times. Modern laws on navigability are still influenced by the Institutes of Justinian, ancient English judicial opinions, the Northwest Ordinance, the obscure "equal footing" doctrine, and theories enunciated by the Supreme Court in 1870 in the case of The Daniel Ball.

River use and the controversies surrounding river use have been changing steadily over the past 25 years. Fishing, digging for clams in the streambed, building docks, piloting barges, and floating logs downstream, are no longer the sole focus of navigability law, precedent, or conflict. We have observed a sea change in public and legal opinion establishing recreational use and the public's enjoyment of rivers for floating, sport fishing, kayaking, and canoeing as the basis for modern navigability law.

In the context of whitewater sports, advances in equipment, technique, and skills have been arriving at an exponential rate. Boaters are now organizing regular competitions on river segments such as the Gore Canyon on the Colorado, Great Falls on the Potomac, and the North Fork of the Payette in Idaho which, as recently as 15 years ago, were viewed as cascades of almost impossible difficulty.

Meanwhile, rivers are seeing more use and riverside lands are becoming more developed. America has more dams and diversions, more timber and mining operations, and more homes being built along riverbanks as ranches and farms are carved up in the nation's seemingly inexorable slide towards urbanization and suburbanization than ever before.

With more recreationists on the river, more projects for power generation, irrigation, flood control, and drinking water supply, and more people using streamside lands for everything and anything, the possibilities of conflict continue to grow. To make matters worse, the litigious inclinations of the American public show no signs of abating and people are seeking dramatic legislative and legal solutions.

Confusion over the rights and obligations of boaters versus the rights and obligations of landowners and other river users is matched by the uncertainly about the proper role of government river managing agencies. How responsible should public agencies be for the safety of those who undertake risk-taking recreational activities on public lands? What rules are

needed to protect rivers and riverine areas from environmental damage? What agency policies are best to ensure fairness between competing use groups? Who should pay for facilities and services to make river access possible? What if sightseers and hikers as well as river runners use these facilities? What obligations do water project developers have to make amends for the loss of recreational opportunities when dams are built or licensed by the government? These difficult public policy issues affect the opportunities of whitewater boaters to pursue their sport.

American Whitewater has prepared this Toolkit to help clarify some of the rights of the public to access and use the rivers and streams in the fifty states and Puerto Rico. We hope that the information in this handbook will serve as a starting point for educating the reader on navigability law in general and will contribute to a reduction of conflicts, leading to a better and more enjoyable relationship among river users, managers, landowners, and others with an interest in these resources.

Federal Title Test & Navigability Report©

DESCRIPTION OF FEDERAL NAVIGABILITY LAW, THE FEDERAL TITLE TEST, & THE IMPORTANCE OF THE DANIEL BALL

Federal navigability law is used to designate federal waters as navigable. If a body of water does not meet these requirements it can still be declared navigable under state law through a state test, but Congress may not regulate it under the powers of the Commerce Clause of the Constitution.

The federal definition of "navigable" waters determines title to the beds underlying streams and lakes. If water was "navigable" under the federal test at the time of statehood, title to the bed of the stream or lake passed to the state upon admission into the Union.

The Daniel Ball is an important Supreme Court case dealing with navigability. It set precedent in three major areas:[1]

1. A river is regarded as a "public navigable river" if it is susceptible of being used in its ordinary condition as a highway for commerce over which trade and travel are or may be conducted in the customary modes of travel and trade on water.

2. A river that is navigable in fact is navigable in law.

3. The test of navigability, as applied to "navigable waters," is the capability of being used for useful purposes of navigation, of trade and travel in the usual & ordinary modes, and not the extent and manner of such use.

The federal tests of navigability for determining title and defining Congress's power differ slightly. Both determine whether the body of water was navigable in fact as of the date a state came into the Union, not the time the determination was made. However, the natural & ordinary condition of the body of water at statehood determines navigability for title; whereas, the turning issue for commerce clause and congressional management purposes is determined by whether the body of water could be made navigable by reasonable artificial improvements.[2]

[1] The Daniel Ball, 77 U.S. 557 (1870).

[2] United States v. Appalachian Electric Power Co., 311 U.S. 377 (1940).

Legal Representation, Navigability Toolkit©

IMPORTANCE OF PROPER LEGAL REPRESENTATION

This Navigability Toolkit is intended to serve as a starting point on navigability law. The Toolkit serves as an educational tool, trying to explain in simple terms the public's rights to access and float rivers and streams. It is by no means the final authority in each state on this topic. It is intended to merely act as a springboard for further research of the law.

Though this toolkit was constructed with properly cited authority and clarifies the public's rights in navigable and non-navigable rivers, it is not a definitive source for many reasons. One is that the "law" is always changing, and therefore all of this information will need to be reconfirmed prior to going to any court. Additionally, this resource does not replace proper legal representation because a local attorney, besides having a background in the local law, will have an understanding of how the local community applies and reacts to navigability issues. This would include relationships with the court system, police, and possibly politicians who may be able to have an impact on a pending situation.

Another aspect to consider is tact. When confronted with a landowner or public officer (police/park service) it can at times be frustrating at best to try to explain the laws of navigability and the right to float through someone's property once legally on a navigable river. However, having an understanding about where it is and is not appropriate to assert navigability rights may save a bit of hassle in the future.

Most importantly though, the impact one case can have on subsequent cases is great, and therefore it is important not to create a restrictive legal precedent. A case should be looked at not only from the perspective of the party going to trial, but also with foresight as to its possible effects on boaters, fishermen, and other recreationists that may desire access to the same area in the future. Most of the time it is therefore helpful to have capable legal counsel when addressing any issue in a court of law.

American Whitewater and local paddling clubs may be able to help boaters find adequate legal counsel regarding navigability questions. If you are interested in volunteering [https://www.americanwhitewater.org/content/Volunteer_view_] your legal assistance or donating to AW [https://www.americanwhitewater.org/content/Store/?crn=199&rn=328&action=show_detail], we would appreciate your assistance.

Feel free to contact American Whitewater with any questions, concerns, comments or updates.

Glossary for Navigability Report©

Allodial: from allodium - an estate held indefinitely or for potentially indefinite duration.

Appropriated: to be set apart for or assign to a particular purpose or use.

Boatable: capable of being floated by recreational craft.

Dispositive: from disposition - a final settlement or determination.

Floatage: the act of floating; often refers to transport of commercial goods.

Impoundment: obstruction, e.g. dam.

Laws of the Partidas: the prior existing Spanish laws that the New Mexico Constitution is based on.

Riparian: relating to the bank of a natural watercourse.

Riverine: relating to a river.

Silviculture: a branch of forestry dealing with the development and care of forests.

Subaqueous: underwater.

Trotline: a comparatively short setline used near shore or along streams.

Setline: a long heavy fishing line to which several hooks are attached in series.

Usufructuary: from usufruct - a right to use and enjoy another's property without damaging or diminishing the property.

Watercourse: natural or manmade channel through which water flows.

Authors & Methodology Navigability Toolkit©

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RESEARCH METHODS

The authors of this document researched materials from Federal and State case law and statutes from all 50 states. The information in the First Edition was collected between 1997 and 2000, and Shephardized prior to publication. Researchers collected the information from law libraries, on-line legal services, and attorneys in the field. This material was updated as appropriate.

In 2007 a team of attorneys at Morgan, Lewis & Bockius LLP reviewed the entire Navigability Toolkit to assure that it is accurate and up to date. The team updated each state with recent court cases and provided editing for all 50 states. They also added a new analysis for Puerto Rico. We are deeply appreciative of this significant donation of legal assistance! In the fall of 2007 we published the Second Edition of the Navigability Toolkit based on the work of the great team at Morgan, Lewis & Bockius LLP

Far too many people to thank individually volunteered their time and energy on this project, for which American Whitewater is sincerely grateful.

We hope to keep the Toolkit as current as possible, and we encourage submissions of relevant cases to AW staff.

News

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NEWS | 03.01.22

New Mexico Supreme Court Invalidates "Non-Navigable Rule," Voids Certificates To Close Public Water

By BEN NEARY

NMWF Conservation Director

The New Mexico Supreme Court on Tuesday unanimously decided that a state game commission rule purporting to allow landowners to limit access to public waters is unconstitutional and void.

The court ruled in response to a legal challenge brought by the New Mexico Wildlife Federation, the Adobe Whitewater Club and the New Mexico Chapter of Backcountry Hunters & Anglers.

Santa Fe lawyers Gene Gallegos and Seth Cohen represented the groups at Tuesday's court hearing. They emphasized that the rule violates the New Mexico State Constitution's guarantee that the unappropriated waters of the state belong to the public.

In their arguments on Tuesday, Gallegos and Cohen pointed out that the New Mexico Supreme Court already addressed the issue of the public 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 Red River case, the court concluded that the public — meaning anglers, boaters or others — may 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 Indian, Spanish and Mexican law that governed New Mexico before statehood, everyone had the right to fish in streams.

Since the game commission rule went into effect in 2018, the commission has 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 have denied public access to the waters, in some instances placing fences across the rivers that prevent boating access.

After hearing arguments in the case on Tuesday, the supreme court justices took a short recess before returning to the courtroom to announce that they were unanimous in finding that the rule is unconstitutional and that the "non-navigable" certificates that the game commission had issued to landowners are void. The court will issue a written opinion spelling out its legal findings.

The state game commission voted late Tuesday afternoon to repeal the certification rule as a result of the court ruling.

Representatives of the groups that brought the legal challenge said they were heartened to see the court roll back the rule and stand up for public access:

"The decision by the New Mexico Supreme Court confirms what the New Mexico Wildlife Federation has been saying for years, that allowing private landowners to restrict public access through rivers where those rivers cross private land is a violation of a right reserved to us by our New Mexico State Constitution," said Jesse Deubel, executive director of the NMWF.

"The privatization of publicly owned natural resources seems to be an increasing threat across the West," Deubel said. "From access to public lands and waters to the increased push to privatize wildlife, these violations of the Public Trust Doctrine are unacceptable and cannot be tolerated."

Joel Gay, policy chair for NM Backcountry Hunters & Anglers, called the decision great news for anglers, boaters and others who use public waters in New Mexico. But he said it shouldn't be a surprise.

"In 1945 the Supreme Court said the same thing – that these waters throughout the state are for everyone to enjoy for recreational use," Gay said. "We don't know how that constitutional right got lost, but for decades we have been told otherwise. Our chapter thanks the Supreme Court for setting the record straight — again."

Scott Carpenter, president of the Adobe Whitewater Club, said New Mexico's rivers and streams are rare and precious resources that all New Mexicans are entitled to enjoy.

"This access is part of New Mexico's heritage," Carpenter said. "The New Mexico Supreme Court unanimously ruled today that the public has a long-standing constitutional right to recreational uses 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."

Robert Levin, New Mexico state director of the American Canoe Association, said, "A handful of landowners do not have the exclusive right to the recreational and economic benefits of public streams flowing across private property. They cannot monopolize the public resource for their exclusive benefit."

Steve Harris, director of the New Mexico River Outfitters Association, said, "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."

Sen. Martin Heinrich, D-N.M., issued a statement applauding the court ruling. He and former U.S. Sen Tom Udall had filed a "friend of the court" brief in support of overturning the commission rule.

"Today is a pretty exciting day in New Mexico history," Heinrich said. "Our state supreme court reaffirmed the constitutional rights of New Mexicans to their public waters. This is a huge victory for people who care about our history, our culture and our natural resources, and I want to thank everyone who made this possible to make sure that public waters stay in public hands."

Groups representing ranchers and landowners had intervened in the case to argue in support of the rule. Lawyer Jeremy Harrison represented the groups at Tuesday's hearing, saying that the public has a right to float on rivers and streams that cross private lands, if they can, but not to get out and recreate. He said the "incidental touching" of an oar on the streambed would be permitted.

Justice C. Shannon Bacon questioned Harrison about his position.

"What about a fly fisherman, walking down the stream, casting a fly — which people do in New Mexico pretty regularly?" Bacon asked. "Is incidental touching in your definition walking down the streambed that is now deemed private by application of this rule?"

Harrison replied that it was not. "At that point, your touching of the land is not incidental to your use of the waters," he said.

Bacon responded, "That's a stretch. If you can't walk on the streambed, and your use and enjoyment protected by the constitution – being your ability to fly fish – unless you can figure out how we can all walk on water – how is that not contrary to the public use and enjoyment of the public water?"

Harrison responded that the constitutional ownership of the water, and the use of the water, is not unlimited. "There's a balance here, because the right to own property is a fundamental protected right, guaranteed by the federal and state constitutions," he said.

Chief Justice Michael Vigil questioned Cohen about what constitutes a permissible recreational use.

Cohen responded that the public has to be engaged in a reasonable recreational use of the water. He said that carries with it the incidental right to touch the streambed and the bank.

"It's important also for the court to articulate what has necessarily been true throughout the course of New Mexico history, which is the public's constitutional right to make recreational use of the public waters includes the incidental right necessarily to touch the streambed and bank as necessarily to effectuate recreational use," Cohen said.

Aaron Wolf, lawyer for the game commission, said the current game commission has no intention of using the rule to certify more stretches of water. The commission last summer rejected five pending applications from landowners seeking to have waterways over their property declared non-navigable and closed to the public.

Gov. Michelle Lujan Grisham has removed two game commissioners since the beginning of her term. Both former commissioners, Joanna Prukop and Jeremy Vesbach, have said they believe the governor targeted them at least in part because they expressed opposition to granting landowner applications under the non-navigable rule. Some of the landowners have made campaign contributions to the governor.

Prukop was removed as commission chair in late 2019 after the commission voted to impose a moratorium on acting on pending applications.

Landowners later went to federal court and secured a court order forcing the commission to act on their applications. Vesbach led the commission's rejection last summer of the five pending applications. Lujan Grisham removed him from the commission early this year.

Prukop said Tuesday she felt absolutely vindicated about what she tried to do as commission chair by the court ruling.

"Today is a wonderful day for state constitutional law in New Mexico," Prukop said.

RELATED NEWS

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NEW MEXICO WILDLIFE FEDERATION

Benefits to the State of Nevada

Access

- The public would have access to all waterways below the high water mark.
- State employees doing water quality and species sampling and surveys would have access to all waterways below the high water mark.

Recreation & Tourism

- The public could freely wade, float, boat, fish and hunt 'within' the waterway and along adjacent public lands.
- Commercial rafting and kayaking tours could occur on more sections of more rivers.
- Nevada State Parks could promote river access and use. For example, Walker River State Park would benefit from having the entire length of the Walker River, from the California/Nevada border to Walker Lake State Park and beyond, possibly to Walker Lake, be accessible for boating and fishing.
- The potential for rivers in Nevada to be designated 'Wild and Scenic". The Bruneau, Jarbidge, Owyhee and Amargosa Rivers have sections in other States that are designated "Wild and Scenic", adding the Nevada sections would be a great opportunity.
- Tourism offices could expand advertisement of recreational opportunities on the rivers and streams of Nevada.

Administrative Consistency

- The State of Nevada owns all the surface waters and waterways except on Tribal lands. The land beneath the 'high water mark' is owned only on waters identified as 'navigable', which is currently only the Colorado, Carson, Truckee and Virgin Rivers. Nevada State Lands as well as other Divisions within the Department of Conservation and Natural Resources, Department of Wildlife and the Department of Transportation would benefit from having all Nevada rivers and streams owned and managed consistently.
- All waters in Nevada would fall under the same State and Federal regulations, the Clean Water Act in particular.

From: **Hattie Johnson, American Whitewater** hattie@americanwhitewater.org
Subject: New Mexico Supreme Court Affirms Constitutional Right to Paddle Rivers!
Date: March 7, 2022 at 3:21 PM
To: Club Contact Sierra Nevada Whitewater Club cralbright@juno.com

AH

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