On January 23, 2020 EPA finalized a rule that drastically reduces the amount of waters that are protected under the federal Clean Water Act. This Dirty Water Rule has serious impacts for New Mexico’s waters and wetlands.

- **The 2020 Dirty Water Rule**, which is officially called the “Navigable Waters Protection Rule”, would negatively impact New Mexico more than any other state in the nation.
- It is likely more than 90% of NM Waters are left unprotected under the Rule.
- The Rule creates regulatory uncertainty as definitions of “ephemeral”, “intermittent”, “perennial”, and “typical year” are subjective and not easily applied.
- The proposed rule would REMOVE Clean Water Act protections for all ephemeral waters and for intermittent and perennial waters that do not flow consistently to a Traditionally Navigable Water (TNW).
- New Mexico is one of only 3 non-delegated states, meaning that EPA administers and issues NPDES permits in NM. Unlike most other states, NM does not have a state program in place to control surface water discharges into state waters – this means that there is now no program in place to control discharges to the majority of NM waters!
- The Gila River and other interstate waters would lose Clean Water Act Protections. (The rule gets rid of interstate waters as a jurisdictional category, and since the lower stretch of the Gila runs dry it does not have consistent flow to a traditional navigable water).
- Important NM tributary streams such as the Santa Fe River, Gallinas, and Rio Costilla provide water for our acequias, wildlife and recreation, but do not always flow year-round. These waters need protection from unregulated dumping and pollution!
- Wetlands that do not have direct surface connection to a jurisdiction water are left unprotected (this is well over half of New Mexico’s wetlands).
- 20% of the state’s vertebrate wildlife depend upon ephemeral and intermittent waters.
- The drinking water of at least 280,000 people in New Mexico is threatened by this rule.
- Other important New Mexico Waters like the Rio Fernando, Comanche Creek, Tijeras Arroyo, Huertas Creek may now be unprotected.
History of the Clean Water Act

- The federal Clean Water Act, passed in 1972, has guided the transition from rivers that literally caught on fire to healthy watersheds where species like the bald eagle and river otter once again thrive.

- The Clean Water Act requires wastewater and industrial facilities to clean water before discharging into the nation’s rivers.

- After Supreme Court decisions in 2001 and 2006, which waters were protected by the Clean Water Act was called into question. These Supreme Court rulings made Clean Water Act protections for some waters that historically had been covered under the law uncertain.

- The Obama Administration finalized a Clean Water Rule in 2015 that clarifies that some of the rivers, streams, and wetlands that fell through the cracks in the post-2001 confusion are indeed protected.

- New Mexico, under Governor Martinez, joined several other states and legally challenged the 2015 Clean Water Rule.

- Governor Lujan-Grisham withdrew the state from this Martinez Administration lawsuit challenging the 2015 rule.

- The Trump Administration repealed the 2015 Clean Water Rule on October 22, 2019.

- On January 23, 2020 the Trump Administration finalized the “Navigable Waters Protection Rule” also known as the “Dirty Water Rule”.

- New Mexico’s waters are now at risk from unregulated dumping and filling.

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