

**Montoya, Jennifer, DGF**

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**From:** UPWA [REDACTED]  
**Sent:** Tuesday, July 27, 2021 12:46 PM  
**To:** Comments, Nonnav, DGF  
**Subject:** Comments for Landowner Certification of Non-Navigable Water

**Categories:** Support

July 27, 2021

ELECTRONIC MAIL TO: NonNav.Comments@state.nm.us

New Mexico Department of Game and Fish  
 P.O. Box 25112,  
 Santa Fe, New Mexico 87504

Re: Landowner Certification of Non-Navigable Water

The Upper Pecos Watershed Association (UPWA) was founded in 2006. It is a non-profit New Mexico Corporation based in Pecos New Mexico. It is a grassroots organization, run by volunteers and governed by a nine-member Board of Directors, all of whom have history and/or interests in Pecos, the Pecos Canyon and the Pecos River. UPWA's mission is to Preserve, Protect and Restore all of the waters of the upper Pecos River and its tributaries North of I-25 to its headwaters. UPWA has applied for and received over \$1.5 million dollars in grant funds and has privately raised another \$400,000 dollars for "on-the-ground and in-stream" projects to accomplish its mission.

UPWA most strongly opposes the measure to be considered by the Game Commission at its August 2021 Meeting.

The Upper Pecos River and its tributaries encompass an approximately 400 square mile area. The river in this area is a small to moderate size, high altitude, clear water, drop-pool stream and an ideal habitat for trout. New Mexico has very few miles of streams like the Pecos, far less than any of the other mountain states. The Upper Pecos is by no stretch of the imagination a "navigable stream" except during extreme flooding when it would be extremely dangerous to attempt to float or boat it.

Approval of the measure being considered by the Game Commission would be extremely damaging to the Upper Pecos and its environment, as it would vastly increase the number of anglers wading in the river, especially doing long distance wading. This would cause:

1. Increased sediment entering the stream from contact with the bottom, causing a rise in water temperatures also in turbidity. Sections of the Pecos have been previously listed by the EPA as "impaired" due to temperature and turbidity. But through work done by UPWA, private landowners, and the Department of Game and Fish these listings have been removed.
2. Increased wading would also damage fish and other aquatic life habitat, including spawning beds, and impact invertebrate and insect life that support the fish population.
3. Large numbers of waders wading for some distance to fish with no bank access would also result in human waste entering the river and potential E. coli contamination. Also, other rubbish would be deposited in the stream and on the banks.
4. Large numbers of waders also increase the probability of introducing non-native invasive species into the stream such as Didymosphenia Geminata (rock snot)
5. Regulating waders would become an issue as the Department moves toward further restoration of Rio Grande Cutthroat Trout in the Pecos and its tributaries.

Approval of this measure would also exacerbate trespass issues as well as over-the-limit violations. Additional law enforcement would be necessary to deal with these issues. UPWA estimates that two full time Game Wardens and one Sheriff's Deputy would need to be devoted to the Canyon.

In short, this measure would be a disaster to the Upper Pecos River and should be rejected on a permanent basis.

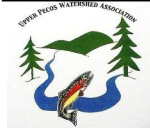
Sincerely,

Frank Adelo, President

Upper Pecos Watershed Association



[www.pecoswatershed.org](http://www.pecoswatershed.org)



**Montoya, Jennifer, DGF**

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**From:** [REDACTED]  
**Sent:** Thursday, July 22, 2021 9:50 AM  
**To:** Comments, Nonnav, DGF  
**Subject:** Non-Navigable Water Certification

**Categories:** Support

I am speaking out in favor of granting the 5 ranches the certification that they have filed. They have done all the due diligence that proves the areas on their land are not navigable and have not been since statehood was granted.

Marting Heinrich stated in his letter that it is only the rich that are trying to prevent the "public" from enjoying the lands that should be theirs. Full disclosure, I am the Treasurer for Three Rivers Cattle Ltd., Co. I am also an owner in a family ranch that has been in the family since 1929.

Heinrich's statement is insulting on many levels. The fact that we have to keep spending money to protect what is ours is infuriating. Most of us cannot afford to pay an attorney to produce all the documentation required to receive this certificate. It will take people with money to blaze the way. I fully support what the 5 ranchers did under Gov Susana Martinez's administration and the 5 that are awaiting approval from the G&F.

Approve the 5 certificates that have been filed.

Sincerely,

Bonnie Brainerd  
Permian Exploration Corp

[REDACTED]

**Montoya, Jennifer, DGF**

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**From:** Bonnie Brainerd [REDACTED]  
**Sent:** Thursday, July 15, 2021 4:19 PM  
**To:** Comments, Nonnav, DGF  
**Subject:** Non-Navigable Certification

**Categories:** Support

Dear Director Sloane and Chairwoman Hickey,

I am writing in support of the 5 ranches that have filed the necessary paperwork and documentation proving that the water ways on their property are not considered Navigable based on the definition rule 19.31.22 NMAC which states “a watercourse is navigable-in-fact when it is used at the time of statehood, in its ordinary and natural condition, as a highway for commerce over which trade and travel was or may have been conducted in the customary modes of trade or travel”.

They have submitted all the documentation necessary to prove that the water ways on their land is not now or ever used for commerce or travel. I am pretty confident that would apply to any and all rivers in the state of NM.

The Game and Fish have proven that they are not good stewards of the land. The forests are burning, the public hunting areas are over sold, creating an unsafe environment for hunters and decimating wildlife herds, and you have released back into the wild predators that are unsafe for wildlife, commercial herds, small pets and potentially children.

Ranchers are just the opposite. They protect their land and their herds, domestic and wild. You should learn from them.

Sincerely,

Bonnie Brainerd  
Treasurer  
Three Rivers Cattle Ltd Co  
And  
Flying H Ranch Inc.

July 13, 2021

Dear NMDGF Commissioners,

For 50 years I was exclusively a public land hunter and fisherman, and then the last 15 years I have become a landowner but am still mostly a public land hunter and fisherman. I have not been able to understand how other public land sportsmen feel they have a right to access resources on private land. I never once felt that I had that right. While I always dreamed of owning a piece of property and working it into a prime piece of land with fish and wildlife, I always knew that to obtain that dream, I had to work for it. As a firefighter, my wife and I worked 28 years before we could buy some acres, with one of us always having a second job to make our dream a reality. We lived in an old, small home and sacrificed luxury for a dream. The idea that by granting these non-navigable waters applications you “would be gifting to the wealthy few control over one of New Mexico’s greatest natural assets at the expense of the public” is totally a myth. We live within an hour of one of the state’s most prolific oil fields flush with money, and, yes some of them have bought riverfront property. However, those landowners make up less than 5% of those along the beautiful Penasco River. Most landowners resemble me and have worked hard to obtain what they have. Why is the public knocking these landowners because of their presumed wealth? When did it become a crime to work hard and obtain your dream? To call this a wealthy landowner issue is insulting and simply not true.

In the end, each of you must look at the facts and make this decision with your head and not your emotions or how others tell you to vote. In March of this year, United States Magistrate Judge Steve Yarbrough in a partial summary judgement, stated that your commission has failed to perform its ministerial duty of processing the navigable water certifications and that within 180 days you must “issue a final agency decision on Plaintiffs’ applications as 19.31.22 NMAC requires.” You have been asked in this comment period by interest groups and individuals to “defer action” on the applications. Have you not already done that? For more than a year? The judge would not agree with this deferment of action, as he stated that the plaintiffs deserved a “plain, speedy, and adequate remedy”, and kicking the can down the road does not resolve the application; it only lengthens the process which is well overdue.

Many groups and individuals have commented that the Adobe Whitewater case before the NM Supreme Court should be settled before deciding the outcome of these applications. “This” as the summary judgement states, “would allow anyone who did not like a particular duly enacted regulation to prevent enforcement of that regulation simply by instituting litigation challenging the validity of that regulation.....;” the Court rejects this type of reasoning. The Judge also told you, “(But) the Adobe Whitewater case involves different parties and a different issue and, therefore, a decision in Adobe Whitewater will not necessarily resolve this matter..... Plaintiffs’ applications are not part of that case. Instead, Plaintiffs’ applications are part of the present case. Plaintiffs bring this lawsuit to enforce a currently valid regulation and the Court finds their request for mandamus to be the only plain, speedy, and adequate remedy available to them.” “Although the New Mexico Supreme Court may ultimately find the law to be unconstitutional (a subject on which the Court expresses no opinion), until and unless it does, Section 19.31.22 is the law of the land.”

Other comments have called the regulation “unconstitutional,” “absurd,” “fails the test of Due Process,” and even it “amounts to gifting the wealthy few control.” Others have quoted the Red River case to fight this regulation, even though the majority holding states the Red River case concerning Conchas Lake (not the Red River): “deals specifically, and only, with these impounded public waters, easily accessible without trespass upon riparian lands.”

The Red River case also never states that a person has the right to wade or walk on streambeds. The only one who says this is AG Gary King. Others quote him, but he has no legal backing for this. In fact, the King Opinion states on page 1 of his footnotes, "However, we determined during the course of our research that NM statutory and regulatory law does not clearly recognize or protect the right to use public streams on private land for fishing, nor has the legislature authorized the Dept. of Game and Fish or any other state agency to regulate or enforce that right." So, in spite of the claims that the regulation is unconstitutional, failing the test of due process, absurd, gifting the wealthy, and defying the Red River ruling, in March of this year, the Court called the commission enacted Landowner Certification of Non-Navigable Water Rule "**a currently valid regulation.**"

State statute supersedes anyone's feelings or interpretations or even an Attorney General Memo or official opinion. This commission should follow the rules, laws, and statutes of the state of NM for which you took an oath of office. NMDGF is a law enforcement agency. What message are you sending if the Commission fails to follow the law?

Look at the lengthy, extensive applications you have received:

- A. Do they provide the owner's name, address, phone number, name of ranch and contact person? Yes
- B. Do they include current recorded property deeds, title, legal description of the property, county, names of non-navigable public water, stream or river on property, a sufficient map? Yes
- C. Is there proof of publication notice for 3 consecutive weeks in a newspaper in the county? Yes
- D. Do they include substantial evidence that the waters, watercourse, or river being non-navigable at the time of statehood, on a segment-by-segment basis? Yes.

Let me add:

1. The U.S. Army Corps of Engineers Albuquerque District, who has the authority to declare navigable water in NM, has declared that there is only one navigable water in the state: Navajo Reservoir because it supports interstate commerce (rental of houseboats and guiding services between NM and CO). This makes every other water in the state non-navigable.
2. While numerous comments you received stated the NM Constitution says: "The unappropriated water of every natural stream, perennial or torrential, within the state of NM, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state," most leave out the "unappropriated" intentionally. I would like to point out that in the case of the Chama III and Rancho del Pardo applications, the US Supreme Court in 2014 in TX v NM and CO, noted that in 1956, "The waters of the Rio Grande Stream System are fully appropriated." This includes: Rio Chama and the Rio Chamita, Jemez, Rio Salado, Galesteo, Rio Puerco, Las Animas Creek, Cuchio Negro, Percha Creek, Alamosa Creek. A USGS Dept. of the Interior Report in 1986 stated that the entire San Juan Basin was fully appropriated: Animas, La Plata, Mancos, San Juan, Navajo River, Rio Chama, Chaco River, Rio Puerco, Rio San Jose, and all of the tributaries including Largo Canyon, Chaco Wash, Arroyo Chico---all fully appropriated. On the River Bend Ranch and Fenn Farms applications, the Pecos Stream System was fully appropriated by the Hope Decree of 1933: Rio Bonito, Rio Hondo, Rio Feliz, Penasco, Gallinas, Rio Ruidoso, Black River. In fact, in 1998, in the Udall opinion 98-01, the State Engineer Tom Turney notes that "it is unlikely that applications for new appropriations of surface waters for instream flows will be submitted and acted upon, since the State's surface waters are currently fully appropriated." Lastly, in a Sandia Laboratory research article in Nov. of 2013 {called "Nationwide Water Availability Data for Energy-Water

Modeling”}, it states: “Availability of unappropriated surface water....is largely limited to the eastern U.S. Little to no unappropriated surface water is available in the West with the exception of western Colorado, southwestern Wyoming, western Oregon, and the Dakotas.” So, there are no unappropriated waters left flowing over private land in NM, meaning there are no public waters to access on private land.

3. On this same note, in the 2014 American Whitewater v. Tidwell (Chief of the United States Forest Service). The U.S. Forest Service considers a waterbody non-navigable until adjudicated otherwise. The U.S. Court of Appeals agreed with the USFS and found a water-body is presumed non-navigable with the burden of proof on the party claiming it is navigable. (Therefore, public rights associated with navigability cannot be presumed to exist without a finding of navigability.)
4. Several have stated that any water flowing in the streams and rivers is considered unappropriated. The NM Constitution does not require diversion or impoundment for a valid water appropriation. Again, Tom Udall’s ‘98 Opinion upholds this, along with an uncountable number of case law. Christine Klein states in “The Constitutional Mythology of Western Water Law, “it is the beneficial use, and not diversion, that is the constitutional hallmark of a water right.” Only those with water rights may legally use the water. 1907 NM Water Law states, “It is provided that beneficial use shall be the basis, the measure, and the limit of the right to the use of the water....and priority in time shall give the better right.” Prior to the adoption of the 1907 Water Code, diversion was required to prove a water right. After 1907, the Water Code Statute replaced the common law requirements for diversion. From 1955 to 1990, NM State Engineer Steve Reynolds had the opinion that a diversion was required. However, for the past 30 years due to case law, the State Engineer’s Office no longer adheres to that interpretation and has held that “an appropriation without diversion can be recognized when no diversion was needed to put water to beneficial use.” When a person applies for a transfer of water rights (the only type available), first and foremost they must hire an engineer to certify that those water rights will be put to beneficial use. Thus, there are no unappropriated waters in the state, and it is entirely acceptable to choose to use those appropriated waters for instream use. Some points of diversion are the lips of the cattle of the water right holder. The Udall Opinion and other case law stated that if a person or group desires to use water for recreational use, they must first obtain prior water rights, have the beneficial use of those waters changed by the NM State Engineer’s Office, and then transfer those rights downstream in the same water basin to a property where they will be utilized.

Thus, the proof, the facts, offered in these applications go above and beyond what the regulation stated is necessary. These applications are thorough, well thought out, and well documented with evidence that the waters flowing through their land is non-navigable and should be therefore certified as such. Do they meet the requirements of the Rule and show that the segment of stream/river is non-navigable? Absolutely.

Sincerely,

Dave J. Cramer



**Montoya, Jennifer, DGF**

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**From:** M Ramsey [REDACTED]  
**Sent:** Monday, July 5, 2021 5:13 PM  
**To:** Comments, Nonnav, DGF  
**Subject:** Non-Navigable Water Comments

**Categories:** Support

Dear NM State Department of Game and Fish,

I believe that the stream/river beds that pass through private property should not be accessible by someone walking up that stream bed. Even if there is water that flows at levels intermittently that is navigable. The Landowner should have the right to deny access. To allow access through private property by designating a dry or intermittently dry stream bed is the same as saying that everyone should have access to private property if there is a road that runs through someone's private property. Even if the Landowner built the road for themselves. Access by a stream bed should not give the public an excuse to be able to access that property.

Even Navigable waters have restrictions on people passing through private property. You can only continue through those areas. You cannot stop unless it is an emergency.

I am asking that all of the applications be approved to deny access through Non-Navigable Water Ways.

Cordially,

*Malcolmn M. Ramsey*

Malcolmn M. Ramsey  
[REDACTED]



June 24, 2021

Office of the Director  
New Mexico Department of Game and Fish  
PO Box 25112  
Santa Fe, NM 87504

By Email: [NonNav.comments@state.nm.us](mailto:NonNav.comments@state.nm.us)

Dear Members of the Commission:

As an owner of land on the Pecos River, I am writing in support of the five applications before you. The five applications ask you to find that the rivers involved in the applications are non-navigable waters and are therefore controlled by the owners having title to the riverbeds. Rather than argue that point, my intention here is to tell you several factors that should lead you to conclude that the people of New Mexico would be best served by having the streams controlled by the title owners.

My family has had a ranch in the Pecos Canyon ( above the town of Pecos) for over 75 years. For all that period, we have maintained a working ranch with livestock. To properly preserve our land, we have several cross fences in the river. These fences separate various animals; prevent the erosion and destruction of riverbanks; and control the areas where the animals can drink. In addition to grazing livestock, we have an authorized shooting preserve where we stock birds and allow friends to shoot.

Our family was the first to invest in significant stream improvements on the Pecos and, over the years, we have spent time, money, and effort into making our stretch of river fish-friendly, with numerous areas for breeding and spawning. Our efforts included stocking the river after the famous flood of 2013 that basically killed all the fish in the river . There is no garbage, refuse, etc. on our portion of the river and the fish thrive.

In light of the effort we have made to keep our stretch of the river both ecologically and aesthetically healthy, I wonder what will happen if the public is allowed to enter that stretch of the river. If they do, there will be members of the public walking into a shooting area. The fences that protect the cows from ruining the riverbanks and vegetation will be cut. We have probably all seen the uncontrolled stretches of the Pecos River, and those stretches are littered with trash, including feces. In those areas, native vegetation is trampled, banks are eroded, and the quality of the river is lessened.

Although I do not argue against public use of the water itself, giving the public the right to enter the property of my family by using the river can be expected to destroy the very qualities that make the river attractive. My experience has been that the small landowners along the river have a single objective, and that is to preserve the natural quality of the river. This is best done if public access is limited to those areas owned by public agencies.

Based on my experience along the Pecos River, I therefore support the applications presently before the Commission.

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Roger Friedman

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Montoya, Jennifer, DGF**

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**From:** Lisa Bastian [REDACTED] >  
**Sent:** Tuesday, June 22, 2021 12:42 PM  
**To:** Comments, Nonnav, DGF  
**Subject:** [EXT] Rivers crossing private land.  
  
**Categories:** Support

River front property is the most expensive of all property.

It doesn't seem fair to just let sportsman and the public to trespass on waters that flow through privately owned land. This will cause problems such as trespassing, littering, cutting fences, poaching etc.

Sent from my iPad

**Montoya, Jennifer, DGF**

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**From:** Tom Simpson [REDACTED]  
**Sent:** Tuesday, June 22, 2021 11:59 AM  
**To:** Comments, Nonnav, DGF  
**Subject:** [EXT]

**Categories:** Support

Please grant these applicants their request for non- navigational waters. We need to protect the owners of private property against unlawful trespass.

Sent from [Mail](#) for Windows 10

**Montoya, Jennifer, DGF**

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**From:** Janet Horton [REDACTED] >  
**Sent:** Tuesday, June 22, 2021 11:03 AM  
**To:** Comments, Nonnav, DGF  
**Subject:** [EXT] Non- Navigable Water Applications

Dear Director Sloane and whom it may concern, I have recently become aware of the ruling on non-navigable water and having read the comments am wondering how to apply for this designation. I own a ranch in Maes NM which contains a section of the Mora River aprox. 1 1/4 miles in length.

Are applications still being considered and if so how might I submit one.

Thank you for your advice.

Sincerely,

Janet Horton  
[REDACTED]

**Montoya, Jennifer, DGF**

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**From:** David Crane [REDACTED]  
**Sent:** Tuesday, June 22, 2021 10:32 AM  
**To:** Comments, Nonnav, DGF  
**Subject:** [EXT] Overview

**Categories:** Support

I would like to have more information of this topic if you don't mind sending me a link  
David Crane [REDACTED]

[Sent from Yahoo Mail for iPhone](#)



## New Mexico Cattle Growers' Association

2231 RIO GRANDE BLVD. N.W. • ALBUQUERQUE, NM 87104

Mailing Address: P.O. Box 7517 • Albuquerque, NM 87194

PHONE (505) 247-0584 • FAX (505) 842-1766 • E-MAIL: [nmcga@nmaculture.org](mailto:nmcga@nmaculture.org)

WEB SITE: [www.nmaculture.org](http://www.nmaculture.org)

June 4, 2021

Office of the Director  
New Mexico Department of Game and Fish  
P.O. Box 25112  
Santa Fe, New Mexico 87504

Email: [NonNav.Comments@state.nm.us](mailto:NonNav.Comments@state.nm.us)

Dear Director Sloane and Chairwoman Hickey:

On behalf of the membership of the New Mexico Cattle Growers' Association (NMCGA), with members in 32 of the state's 33 counties as well as 19 other states we are submitting our comments in support of Chama III, LLC Application for Certification of Non-Navigable Public Water Segment for the Chama River and Rio Chamita that runs through its Canones Creek Ranch property.

Chama III, LLC ranch property Canones Creek Ranch, located in Rio Arriba County, has provided documentation and exhibits to support they own the property and that the waters are non-navigable.

New Mexico Department of Game and Fish promulgated rule 19.31.22 NMAC which provides a definition of "navigable-in-fact" to assess if a waterway is navigable. The definition states that "navigable-in fact determination" shall be made on a segment by segment basis. It further states that "a watercourse is navigable-in-fact when it is used at the time of statehood, in its ordinary and natural condition, as a highway for commerce over which trade and travel was or may have been conducted in the customary modes of trade or travel"

In 1899, the United States Supreme Court, in part reserving the Supreme Court of the Territory of New Mexico, recognized that the Rio Grande River was non-navigable within the Territory of New Mexico. ***Rio Grande is not navigable within the limits of the territory of New Mexico, the mere fact that logs, poles and rafts are floated down the stream occasionally and in times of high water does not make it a navigable river.***

In closing we feel that all of the criteria has been met and that the application is complete and therefore the Application for Certification of Non-Navigable Public Water Segment by Chama III, LLC should be granted.

Sincerely,

Randell Major, President

RANDELL MAJOR, President, Magdalena; LOREN PATTERSON, President-Elect, Corona; JOE CULBERTSON, Vice-President At Large, Arizpe; ROY FARR, SW Vice-President, Datil; DUSTIN JOHNSON, NW Vice-President, Farmington; JEFF DECKER, SE Vice-President, Lovington; CLIFF COPELAND, NE Vice-President, Nara Visa; SHACEY SULLIVAN, Secretary-Treasurer, Bosque Farms; TOM SIDWELL, Past President, Quay; PAT BOONE, Past-President, Elida; SHELLEEN SMITH Executive Director, Albuquerque



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Email: [NonNav.Comments@state.nm.us](mailto:NonNav.Comments@state.nm.us)

Dear Director Sloane and Chairwoman Hickey:

On behalf of the membership of the New Mexico Cattle Growers' Association (NMCGA), with members in 32 of the state's 33 counties as well as 19 other states we are submitting our comments in support of the Application for Certification of Non-Navigable Public Water Segment for the Three Rivers and Indian Creek that runs through the Three Rivers Ranch.


The Three Rivers Ranch located in Otero and Lincoln County, has provided documentation and exhibits to support they own the property and that the waters are non-navigable.

New Mexico Department of Game and Fish promulgated rule 19.31.22 NMAC which provides a definition of "navigable-in-fact" to assess if a waterway is navigable. The definition states that "navigable-in fact determination" shall be made on a segment by segment basis. It further states that "a watercourse is navigable-in-fact when it is used at the time of statehood, in its ordinary and natural condition, as a highway for commerce over which trade and travel was or may have been conducted in the customary modes of trade or travel"

In 1899, the United States Supreme Court, in part reserving the Supreme Court of the Territory of New Mexico, recognized that the Rio Grande River was non-navigable within the Territory of New Mexico. ***Rio Grande is not navigable within the limits of the territory of New Mexico, the mere fact that logs, poles and rafts are floated down the stream occasionally and in times of high water does not make it a navigable river.***

In closing we feel that all of the criteria has been met and that the application is complete and therefore the Application for Certification of Non-Navigable Public Water Segment by the Three Rivers Ranch should be granted.

Sincerely,

  
Randell Major, President

RANDELL MAJOR, President, Magdalena; LOREN PATTERSON, President-Elect, Corona; JOE CULBERTSON, Vice-President At Large Amistad, ROY FARR, SW Vice-President Datil; DUSTIN JOHNSON, NW Vice-President, Farmington; JEFF DECKER, SE Vice-President, Lovington; CLIFF COPELAND, NE Vice-President, Nara Visa; SHACEY SULLIVAN, Secretary-Treasurer, Bosque Farms; TOM SIDWELL, Past President, Quay; PAT BOONE, Past-President, Elida; SHELLEEN SMITH Executive Director, Albuquerque





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Email: [NonNav.Comments@state.nm.us](mailto:NonNav.Comments@state.nm.us)

Dear Director Sloane and Chairwoman Hickey:

On behalf of the membership of the New Mexico Cattle Growers' Association (NMCGA), with members in 32 of the state's 33 counties as well as 19 other states we are submitting our comments in support of the Application for Certification of Non-Navigable Public Water Segment for the Hondo and Berrendo rivers that run through Fenn Farms Ranch.

Fenn Farm Ranch property is located in Chaves County, has provided documentation and exhibits to support they own the property and that the waters are non-navigable.

New Mexico Department of Game and Fish promulgated rule 19.31.22 NMAC which provides a definition of "navigable-in-fact" to assess if a waterway is navigable. The definition states that "navigable-in fact determination" shall be made on a segment by segment basis. It further states that "a watercourse is navigable-in-fact when it is used at the time of statehood, in its ordinary and natural condition, as a highway for commerce over which trade and travel was or may have been conducted in the customary modes of trade or travel"

In 1899, the United States Supreme Court, in part reserving the Supreme Court of the Territory of New Mexico, recognized that the Rio Grande River was non-navigable within the Territory of New Mexico. ***Rio Grande is not navigable within the limits of the territory of New Mexico, the mere fact that logs, poles and rafts are floated down the stream occasionally and in times of high water does not make it a navigable river.***

In closing we feel that all of the criteria has been met and that the application is complete and therefore the Application for Certification of Non-Navigable Public Water Segment by Fenn Farms Ranch should be granted.

Sincerely,

  
Randell Major, President

RANDELL MAJOR, President, Magdalena; LOREN PATTERSON, President-Elect, Corona; JOE CULBERTSON, Vice-President At Large Amistad, ROY FARR, SW Vice-President Datil; DUSTIN JOHNSON, NW Vice-President, Farmington; JEFF DECKER, SE Vice-President, Lovington; CLIFF COPELAND, NE Vice-President, Nara Visa; SHACEY SULLIVAN, Secretary-Treasurer, Bosque Farms; TOM SIDWELL, Past President, Quay; PAT BOONE, Past-President, Elida; SHELLEEN SMITH Executive Director, Albuquerque



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P.O. Box 25112  
Santa Fe, New Mexico 87504

Email: [NonNav.Comments@state.nm.us](mailto:NonNav.Comments@state.nm.us)

Dear Director Sloane and Chairwoman Hickey:

On behalf of the membership of the New Mexico Cattle Growers' Association (NMCGA), with members in 32 of the state's 33 counties as well as 19 other states we are submitting our comments in support of the Application for Certification of Non-Navigable Public Water Segment for the Upper Pecos River that runs through the River Bend Ranch.

The River Bend Ranch is located in San Miguel County, has provided documentation and exhibits to support they own the property and that the waters are non-navigable.

New Mexico Department of Game and Fish promulgated rule 19.31.22 NMAC which provides a definition of "navigable-in-fact" to assess if a waterway is navigable. The definition states that "navigable-in fact determination" shall be made on a segment by segment basis. It further states that "a watercourse is navigable-in-fact when it is used at the time of statehood, in its ordinary and natural condition, as a highway for commerce over which trade and travel was or may have been conducted in the customary modes of trade or travel"

In 1899, the United States Supreme Court, in part reserving the Supreme Court of the Territory of New Mexico, recognized that the Rio Grande River was non-navigable within the Territory of New Mexico. ***Rio Grande is not navigable within the limits of the territory of New Mexico, the mere fact that logs, poles and rafts are floated down the stream occasionally and in times of high water does not make it a navigable river.***

In closing we feel that all of the criteria has been met and that the application is complete and therefore the Application for Certification of Non-Navigable Public Water Segment by the River Bend Ranch should be granted.

Sincerely,

Randell Major, President

RANDELL MAJOR, President, Magdalena; LOREN PATTERSON, President-Elect, Corona; JOE CULBERTSON, Vice-President At Large Amistad, ROY FARR, SW Vice-President Datil; DUSTIN JOHNSON, NW Vice-President, Farmington; JEFF DECKER, SE Vice-President, Lovington; CLIFF COPELAND, NE Vice-President, Nara Visa; SHACEY SULLIVAN, Secretary-Treasurer, Bosque Farms; TOM SIDWELL, Past President, Quay; PAT BOONE, Past-President, Elida; SHELLEEN SMITH Executive Director, Albuquerque



## New Mexico Cattle Growers' Association

2231 RIO GRANDE BLVD. N.W. • ALBUQUERQUE, NM 87104

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WEB SITE: [www.nmagriculture.org](http://www.nmagriculture.org)

June 4, 2021

Office of the Director  
New Mexico Department of Game and Fish  
P.O. Box 25112  
Santa Fe, New Mexico 87504

Email: [NonNav.Comments@state.nm.us](mailto:NonNav.Comments@state.nm.us)

Dear Director Sloane and Chairwoman Hickey:

On behalf of the membership of the New Mexico Cattle Growers' Association (NMCGA), with members in 32 of the state's 33 counties as well as 19 other states we are submitting our comments in support of the Application for Certification of Non-Navigable Public Water Segment for the Chama River that run through Rancho del Oso Pardo.

Rancho del Oso Pardo ranch property located in Rio Arriba County, has provided documentation and exhibits to support they own the property and that the waters are non-navigable.

New Mexico Department of Game and Fish promulgated rule 19.31.22 NMAC which provides a definition of "navigable-in-fact" to assess if a waterway is navigable. The definition states that "navigable-in fact determination" shall be made on a segment by segment basis. It further states that "a watercourse is navigable-in-fact when it is used at the time of statehood, in its ordinary and natural condition, as a highway for commerce over which trade and travel was or may have been conducted in the customary modes of trade or travel"

In 1899, the United States Supreme Court, in part reserving the Supreme Court of the Territory of New Mexico, recognized that the Rio Grande River was non-navigable within the Territory of New Mexico. ***Rio Grande is not navigable within the limits of the territory of New Mexico, the mere fact that logs, poles and rafts are floated down the stream occasionally and in times of high water does not make it a navigable river.***

In closing we feel that all of the criteria has been met and that the application is complete and therefore the Application for Certification of Non-Navigable Public Water Segment by Rancho del Oso Prado should be granted.

Sincerely,

Randell Major, President

RANDELL MAJOR, President, Magdalena; LOREN PATTERSON, President-Elect, Corona; JOE CULBERTSON, Vice-President At Large Amistad, ROY FARR, SW Vice-President Datil; DUSTIN JOHNSON, NW Vice-President, Farmington; JEFF DECKER, SE Vice-President, Lovington; CLIFF COPELAND, NE Vice-President, Nara Visa; SHACEY SULLIVAN, Secretary-Treasurer, Bosque Farms; TOM SIDWELL, Past President, Quay; PAT BOONE, Past-President, Elida; SHELLEEN SMITH Executive Director, Albuquerque



**NEW MEXICO FARM & LIVESTOCK BUREAU**

2220 N. Telshor Blvd • Las Cruces, New Mexico 88011 • (575) 532-4700 • Fax (575) 532-4710

Office of the Director  
New Mexico Department of Game and Fish  
P.O. Box 25112  
Santa Fe, New Mexico 87504

RE: Public Comment Non-Navigable Water Applications

June 2, 2021

Chair Hickey,

New Mexico Farm and Livestock Bureau (NMF&LB) is the largest and oldest advocacy organization in New Mexico representing more than 20,000 members across the state. NMF&LB is a grassroots advocacy organization guided by policy developed by volunteer members involved in a variety of agricultural industries in New Mexico's 33 counties. As the Voice of New Mexico Agriculture, we appreciate the opportunity to comment on the five pending non-navigable water applications.

NMF&LB, on behalf of our members many who have waters flowing through their private land in the state, wishes to note our support and recommend speedy approval of the five applications before you. NMF&LB policy emphasizes the importance of the American capitalistic, private, competitive enterprise system in which property is privately owned, privately managed, and privately operated for profit and individual satisfaction.

After review of the five applications, we agree with the applicants' proof and documentation that their respective waters were not navigable at the time of statehood, this is consistent with many reports and findings which indicate that **none of the waters in NM** were navigable at statehood. Therefore, title to a riverbed or streambed is considered part of the property through which the water flows and for which there is no public right to enter based on the mere presence of water.

We respectfully request that the commission grant the five applicants their certificates of non-navigable water. These certificates provide private property owners an additional tool in the toolbox to defend against trespass on their private property. We must work to continually ensure that the rights of citizens are protected, especially when it comes to their private

property rights. We thank you for the opportunity to provide comment and recommendation on this important matter and hope that the applications will be addressed in a quick manner.

Respectfully,

A handwritten signature in dark ink, appearing to read "C. Smith". The signature is fluid and cursive, with a large initial "C" and a stylized "S" for "Smith".

Chad Smith

CEO

New Mexico Farm and Livestock Bureau