

State court upholds wilderness water designations after appeal by group

By Matthew van Buren

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The state Court of Appeals has dismissed a challenge by the New Mexico Cattle Growers' Association, allowing protective designations of perennial waters within wilderness areas to move forward.

The association's appeal was filed to challenge a 2010 decision by the state Water Quality Control Commission (WQCC) to designate 700 miles of perennial rivers and streams, 29 lakes and nearly 5,000 acres of wetlands as Outstanding Natural Resource Waters (ONRWs).

The ONRW designation seeks to prevent surface water quality degradation while allowing grand fathered uses, such as grazing, acequia maintenance and irrigation, to continue. The Outstanding Natural Resource Waters designations are also eligible to receive funds for improvement projects.

"Protecting the state's headwater streams, lakes and wetlands from degradation by designating them as ONRWs will establish a foundation for long-term preservation and restoration of some of New Mexico's most significant resource waters," a petition nominating the waters for ONRW designation states. "Protection of these waters will help maintain a clean water supply for uses in wilderness areas and for downstream uses by municipalities, agricultural and recreational interests, and will help maintain healthy, functioning ecosystems, preserve habitat and protect endangered and threatened species."

The New Mexico Cattle Growers' Association appealed the Water Quality Control Commission's decision, claiming in part, according to the Court of Appeals' ruling, "that the designation of waters in the order was too sweeping and that the petition included fatal procedural flaws." The Court of Appeals, however, found that the Cattle Growers' Association "has not shown that it is adversely affected, thus failing to establish a statutory requirement for pursuing its appeal, which we dismiss." The court found that the association failed to describe how the Outstanding Natural Resource Waters designation would "remove livestock from any area affected by the designation, force producers out of business or drive down the herd size" in light of the argument that "grazing permittees, as a designated pre-existing land use, were specifically exempted from Outstanding National Resource Waters requirements."

Taos nonprofit Amigos Bravos was involved in the fight over the wilderness ONRW designations, as well as seeking ONRW designations for the surface waters of the Valle Vidal and the Pecos Wilderness' Rio Santa Barbara.

“The ONRW designations respect all New Mexicans’ interests — including the Cattle Growers’ — in the protection and management of water quality in our wilderness waters,” Amigos Bravos projects director Rachel Conn is quoted in a news release. “This is a victory for clean water in New Mexico.”

In an interview with *The Taos News* , Conn said the process provided ample opportunities for public input, and hopes the Forest Service will work to ensure the ONRWs do not degrade.

“These waters have truly been identified by a broad range of stakeholders to be special waters,” she said.

The newly designated ONRWs are located in a dozen wilderness areas in five National Forests throughout the state. Within the Carson National Forest, affected wilderness areas include the Wheeler Peak and Latir Peak wildernesses, the Pecos Wilderness and the Cruces Basin Wilderness. In the Santa Fe National Forest, the Pecos Wilderness, Jemez Mountains’ Dome Wilderness, Chama River Canyon Wilderness and the San Pedro Parks Wilderness.

Conn said seeking the new Outstanding Natural Resource Waters designations was a “twofold process” in that language describing how waters will be protected was also determined. She said Amigos Bravos is pleased with both outcomes.

Conn said Amigos Bravos offers training to those interested in nominating waters for the Outstanding Natural Resource Waters designation, as well as Clean Water Act trainings.

Carson National Forest spokeswoman Kathy DeLucas said state requirements will all be followed, though she said she does not anticipate much change in response to the ONRW designations. “We’re already managing to those standards,” she said.

More information about New Mexico’s ONRWs, including maps and legal documents, can be found at www.nmenv.state.nm.us/swqb/ONRW/Maps/ .

For more about Amigos Bravos, visit www.amigosbravos.org.