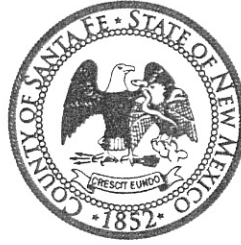


Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Rudy N. Garcia
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

Memorandum

Date: February 26, 2019

To: Board of County Commissioners

Via: Katherine Miller, County Manager

From: Anna C. Hansen, Santa Fe County Commissioner, District 2

Subject: Resolution No. 2019-____, A Resolution Opposing the Environmental Protection Agency's and the U.S. Army Corps of Engineers' Proposed Amendment to the Clean Water Rule Adopted in 2015 Defining Waters of the United States (WOTUS)

Background and Summary:

On February 28, 2017, the President of the United States issued an Executive Order directing the Environmental Protection Agency (EPA) and the Department of the Army to review and rescind or revise the 2015 Clean Water Rule. On February 14, 2019, the agencies published a new proposed Rule in the Federal Register. The 60-day public comment period ends on April 15, 2019.

As advised in the attached letter from the River Commission, the proposed new rule will roll back key protections of the federal Clean Water Act (CWA) with potentially detrimental effects on the nation's rivers and streams and closer to home – the Santa Fe River and the Rio Grande. The proposed rule redefines "Water of the United States" to remove Clean Water Act protection from all ephemeral waters, such as the vast network of arroyos and ephemeral rivers and streams that we have in New Mexico. Ephemeral streams are estimated to make up 90 percent of all surface waters in New Mexico.

Santa Fe County's ephemeral and intermittent streams within the boundaries of Los Alamos National Laboratory that drain into the Rio Grande above the County and City owned and operated Buckman Direct Diversion Regional Water Treatment Facility would no longer be protected and would leave our newest (2011) source of drinking water imperiled. The County and City are responsible for improving protections and safeguards for our water supplies.

Action Requested:

Commissioner Hansen respectfully requests the Board of County Commissioners support and approve this resolution.

**THE BOARD OF COUNTY COMMISSIONERS OF
SANTA FE COUNTY
RESOLUTION NO. 2019 - _____**

**A RESOLUTION OPPOSING THE ENVIRONMENTAL PROTECTION AGENCY'S
AND U.S. ARMY CORPS OF ENGINEERS' PROPOSED AMENDMENT
TO THE CLEAN WATER RULE ADOPTED IN 2015 DEFINING
WATERS OF THE UNITED STATES (WOTUS)**

WHEREAS, on December 11, 2018, the Environmental Protection Agency (EPA) and the Department of the Army signed a proposed rule revising the definition of "Waters of the United States" to "clarify" federal authority under the Clean Water Act (CWA); and

WHEREAS, this proposal is the second step in a two-step process to review and revise the definition of the "Waters of the United States"; and

WHEREAS, the proposed definition would replace and weaken and further restrict the definition adopted by the EPA and the U.S. Army Corps of Engineers in a 2015 Rule and weaken the pre-2015 regulations; and

WHEREAS, the Santa Fe River and its watershed, including all ephemeral and intermittent tributaries, Nichols and McClure reservoirs, ground water, wastewater treatment facility, public infrastructure, private property, arroyos, and the Rio Grande could be negatively affected by pollutant loads and sediment associated with the proposed changes; and

WHEREAS, Santa Fe's centuries-old source of local drinking water and its acequia system already face significant stress from the impacts of climate change, toxic chemicals, stormwater runoff, waste, and illegal dumping such that we should strive to improve protections for our water supplies rather than put them at risk; and

WHEREAS, ephemeral and intermittent streams within the boundaries of Los Alamos National Laboratory drain directly or indirectly into the Rio Grande above the County and City owned and operated Buckman Direct Diversion Regional Water Treatment Facility which diverts water from the Rio Grande and supplies critical water and fire protection services to the residents of Santa Fe County; and

WHEREAS, these ephemeral reaches of the Santa Fe River, the Rio Grande and associated tributaries and arroyos would no longer be protected and would leave our newest (2011) source of drinking water imperiled and the perennial reaches of the river upstream of our reservoirs will likely also lose protection; and

WHEREAS, operational, maintenance, and water-treatment costs at the Buckman Direct Diversion Regional Water Treatment Facility would likely increase due to elevated sediment loads, levels of contaminants and radionuclides in the Rio Grande; and

WHEREAS, the Santa Fe River and the Rio Grande provide water for wildlife habitat, irrigation, recreation, tourism and cultural uses, and our thriving outdoor recreation economy depends on clean and safe rivers and streams; and

WHEREAS, Section 402 of the CWA regulates the direct discharge of pollutants from sources such as wastewater treatment plants, industry, commercial wastes, construction activities, and pollutants associated with stormwater runoff; and

WHEREAS, Section 404 of the CWA regulates dredge and fill activities including the placement of fill within a watercourse, the dredging of watercourses, and the development or alteration of stream channels and such activities that add large amounts of sediment, fill, and other pollutants to rivers, streams, and wetlands; and

WHEREAS, the Santa Fe County and the City of Santa Fe have expended significant resources on river restoration, erosion control, channel stability, flood control, and water quality improvement projects and the changes in the proposed rule would undermine these efforts to restore the Santa Fe River; and

WHEREAS, neither the Santa Fe County nor the City of Santa Fe nor the State of New Mexico have jurisdiction, primacy, or authority over CWA provisions protecting water quality (including but not limited to the National Pollution Discharge Elimination System – NPDES – Program, Section 402 and Section 404) and the County relies on the EPA and the Army Corps of Engineers to protect our surface water quality; and

WHEREAS, the Santa Fe County supports the adoption of the individual designated use classification(s) of the Santa Fe River and the adoption of water quality standards for the protection of those uses pursuant to the federal CWA and the New Mexico Water Quality Standards for Interstate and Intrastate Streams; and

WHEREAS, Santa Fe County's strategic plan to address the challenges of stormwater depends on a strong CWA at the federal level; and

WHEREAS, a healthy river is an important part of Santa Fe's appeal with respect to the quality of life for residents and the quality of the experience for our county and for its many visitors; and

WHEREAS, a healthy river protects public safety, critical resources and infrastructure; and

WHEREAS, loss of and damage to riparian areas could be severe and could result in the Santa Fe River losing its status as a protected water under the CWA and its eligibility for CWA State Revolving Fund loans and grants, which can be used for watershed restoration projects, wastewater construction projects, and stormwater infrastructure; and

WHEREAS, the Santa Fe River Commission requested that Santa Fe County and the governing body express its concerns in order to protect the Santa Fe River and the waters of New Mexico during the 60-day comment period, which commenced with the publication of the proposed Rule in the Federal Register on February 14, 2019, and which ends on April 15, 2019.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Santa Fe County, hereby:

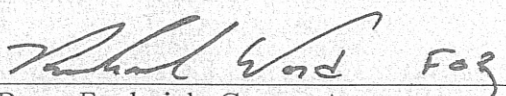
1. Requests that the aforementioned proposed amendments do not go into effect.
2. Directs the County Manager to create and send a letter to the Environmental Protection Agency (EPA) opposing the proposed amendments within their 60-day public comment period ending April 15, 2019.
3. Directs the County Manager to submit this resolution to the EPA within their 60-day public comment period ending April 15, 2019.
4. Directs the County Manager to submit copies to the New Mexico Congressional delegation of both this Resolution and comments submitted to the EPA in opposition to the proposed amendments.
5. Encourages the citizens of Santa Fe County and the general public to make similar public comments during the EPA's 60-day public comment period ending April 15, 2019.

PASSED, APPROVED, AND ADOPTED ON THIS 26th DAY OF FEBRUARY, 2019.

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY

Anna T. Hamilton, Chair

APPROVED AS TO FORM:


R. Bruce Frederick, County Attorney

ATTESTATION:

Geraldine Salazar, County Clerk

