

Outstanding National Resource Waters (ONRWs): A Key Tool to Protect Clean Water in New Mexico

Overview and Frequently Asked Questions

In November of 2010, New Mexico's Water Quality Control Commission protected clean water in New Mexico by designating rivers, streams, lakes, and wetlands in US Forest Service Wilderness Areas as Outstanding National Resource Waters (ONRWs). These waters are a vital foundation to the durability and resilience of New Mexico's rural and agriculture communities, provide recreational opportunities, and ensure a clean source of drinking water to our towns and cities. Many New Mexicans support ONRWs protections, for example, during the recent hearings, 9 New Mexico municipalities wrote letters actively supporting ONRW protections.

These newly designated waters will join the Rio Santa Barbara (designated in 2004) and the Waters of the Valle Vidal (designated in 2005) as New Mexico's only ONRWs. Symbolic of our shared New Mexico heritage and values, these ONRWs protect against new or increased pollution.

Critically, the protection afforded by ONRW designation respects these waters' role as the lifeblood of our communities. Traditional and sustainable land uses such as grazing and our acequia culture are 'grandfathered' by the designation and can continue as they have in the past. The focus of ONRW designation is future degradation caused by new or increased sources of pollution. This focus in fact provides an essential level of protection for traditional uses of the land, ensuring that these uses have access to clean water. In addition, ONRW designation streamlines the approval process for watershed protection and restoration projects such as riparian habitat rehabilitation, forest thinning to mitigate wildfires, and other activities. In so doing, the protection afforded by ONRW designation reaches far downstream, providing clean water to our farms, towns, and cities.

What exactly do ONRW protections do? ONRW protections are like a photograph. Preexisting traditional and sustainable land uses such as grazing – if part of that "photo" at the time of designation – can continue so long as degradation does not intensify. But pollution sources that are not part of that "photo" (and would hurt preexisting uses) could be prohibited to protect water quality and the land uses and values that rely upon those waters. ONRW protection thus respects and, in fact, protects traditional and sustainable land use activities.

Will Outstanding National Resource Water stop traditional land use practices such as grazing?

NO. There is a common misconception that ONRW protections will somehow harm traditional land uses such as grazing. This is simply not true. The protections only apply to new or increased sources of pollution. Therefore, existing, ongoing activities – even those that cause some pollution – are not negatively impacted so long as those activities use common sense best management practices.

Has there been a reduction of grazing or conflict with the grazing community in the Rio Santa Barbara or in the Valle Vidal due to ONRW designation?

NO. There has not been an impact on the grazing community due to ONRW designation.

Do ONRW protections take away water rights? Absolutely not. In fact, state law (NMSA § 74-6-12) explicitly provides that water quality protections cannot and do not take away or modify water rights.

How do ONRW protections impact acequias? ONRW protections will ensure that water quality diverted by acequias remains clean and free of pollution. In addition, there is a specific exemption for any water quality pollution caused by acequias.

What about the all fine print and legal details? We know that the ‘devil is in the details,’ so here’s a breakdown of the “legal fine print” so you can research and understand ONRW protections for yourself:

An ONRW is a designation made pursuant to our Nation’s Clean Water Act. The Clean Water Act seeks “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters” and to attain “an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water...” 33 U.S.C. § 1251(a). Accordingly, the Clean Water Act authorizes New Mexico to develop water quality standards for all of the state’s waters. 33 U.S.C. §§ 1311(b)(1)(C), 1313. “A water quality standard defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses.” 40 C.F.R. § 131.2. Water quality standards consist of designated uses, criteria, and an antidegradation policy. 40 C.F.R. §§ 131.10 - 131.12.

ONRW protections are a key part of our antidegradation policy. As the Environmental Protection Agency has explained, “[a]ntidegradation implementation is an integral component of a comprehensive approach to protecting and enhancing water quality.” EPA, Water Quality Handbook at 4-1 (1994). The ONRW designation constitutes the most protective “Tier III” of the antidegradation policy, providing that “[w]here high quality waters constitute an outstanding National resource, such as waters of National Parks, State parks and wildlife refuges, and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.” 40 C.F.R. § 131.12(a)(3). EPA ONRW policy language requires that actions “must not permanently degrade water quality or result in water quality lower than that necessary to protect the existing uses in the ONRW.” EPA Handbook at 4-10.

New Mexico’s newly adopted rules and guidance for ONRWs (20.6.4.8 NMAC) accomplish several important tasks. They:

- Protect against degradation from new or increased pollution sources;
- Provide for public involvement in the designation and management of ONRWs;
- Grandfather and thus allow preexisting land-use activities, such as grazing, controlled by best management practices;
- Exempt acequia maintenance, operation, and repairs from any new requirements resulting from ONRW designation;
- Allow activities necessary for public health and safety to take place in an ORNW; and:
- Guide how land management agencies, such as the U.S. Forest Service, manage ONRWs while respecting those agencies unique missions and responsibilities.

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