



BILL RICHARDSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Office of the Secretary
Harold Runnels Building
1190 St. Francis Drive, P.O. Box 26110
Santa Fe, New Mexico 87502-6110
Telephone (505) 827-2855



RON CURRY
SECRETARY

JON GOLDSTEIN
DEPUTY SECRETARY

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Contact: Marissa Stone, NMED Communications Director
Telephone: (505) 827-0314 or (505) 231-0475

Environment Secretary Curry Urges Albuquerque Mayor Chavez to Support Clean Water Restoration Act

Act Supported by Governor Richardson Offers Protections for Surface Waters in New Mexico

(Santa Fe, N.M.) New Mexico Environment Department Secretary Ron Curry urged Albuquerque Mayor Martin Chavez in a letter to support the passage of the Clean Water Restoration Act that would restore protections for New Mexico's vulnerable surface waters.

The letter (attached) asks Mayor Chavez to support the act in light of his role as co-chair of the Mayors' Water Council of the U.S. Conference of Mayors.

"The Clean Water Act has been our nation's main tool in ensuring the continued protection of the water we drink, enjoy for recreation and that wildlife communities rely upon," said New Mexico Environment Department Secretary Ron Curry. "Unfortunately, the effectiveness of this tool has been blunted by two recent Supreme Court decisions. That creates an urgency to support this legislation — I urge Mayor Chavez to do that."

The Southwest has a limited water supply and that creates a need for well-defined protections for surface waters under the Clean Water Act. The aftermath of two recent Supreme Court decisions have the potential to leave large portions of New Mexico's surface waters vulnerable — nearly 90 percent of New Mexico's surface waters could lose protection if the scope and breadth of the Clean Water Act is not restored.

"Municipalities in New Mexico also have another important reason to support the Clean Water Restoration Act (CWRA) — and that reason is money," Secretary Curry states in the letter. "For the past three decades, the U.S. Environmental Protection Agency has administered the National Pollutant Discharge Elimination System (NPDES) program in New Mexico at little cost to the state and that would continue under the CWRA. However, if the act is not implemented and the state must step in to develop its own surface water quality protection program, implementation costs have been estimated at \$1.9 million in state dollars. A large percentage of these costs could end up being passed on to municipal permit holders if EPA is not longer invested in protecting the state's waters."

Clarifications in the Clean Water Restoration Act would help remove confusion created by the two Supreme Court decisions -- 2001 ruling in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC) and its 2006 ruling *Rapanos v. United States*, 547 U.S., 126 S.Ct. 2208 (Rapanos) -- that limited waters that receive protection under the Act.

Those decisions potentially limited federal protection in New Mexico for nearly 100,000 miles of non-perennial waters, thousands of playa lakes, headwaters, springs, cienegas and wetlands. . In addition, closed basins that comprise 20 percent of New Mexico's land area are now considered to fall outside the jurisdiction of the Clean Water Act.

The Supreme Court rulings essentially defined two classes of water, one that is tied directly to "navigability" and deserves federal protection from pollution, and a second class that is completely abandoned or must undergo a case by case "significant nexus" test. That test requires that tributaries or wetlands would be dropped from protection if the government cannot directly prove they empty into navigable waters.

Governor Richardson has fought to restore protections to New Mexico's waters. He has twice directed Secretary Curry to testify before Congressional committees in Washington, DC in support of the CWRA. In March 2003, Governor Richardson filed formal comments with the U.S. Environmental Protection Agency petitioning that New Mexico's closed basins and other imperiled waters remain protected under the federal Clean Water Act. He also strongly supported the Clean Water Authority Restoration Act of 2003, a precursor to this legislation.

More recently, Governor Richardson successfully opposed oil and gas drilling in the Valle Vidal of Northern New Mexico, and in order to protect its world class trout streams, he had this area's streams listed as Outstanding National Resource Waters. He is also fighting to protect the Salt Basin Aquifer from energy development at Otero Mesa. In 2007, Governor Richardson also launched a multi-million dollar effort — the first in state history — to provide a state funding source for river ecosystem restoration.

For more information, call Marissa Stone at (505) 827-0314 or (505) 231-0475.

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