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Contact: Marissa Stone, NMED
Telephone: (505) 827-0314

Environment Secretary to Testify in Favor of Clean Water Restoration Act Thursday before U.S. Senate Committee on Environment and Public Works

(Santa Fe, N.M.) New Mexico Environment Department Secretary Ron Curry will testify before a U.S. Senate committee on Thursday in Washington D.C. to urge federal lawmakers to pass the Clean Water Restoration Act of 2007 to restore protections for surface waters in New Mexico and across the nation.

S. 1870, the Clean Water Restoration Act of 2007, would restore protections for surface waters under the Clean Water Act that were narrowed after recent Supreme Court rulings, *Solid Waste Agency of Northern Cook County v. US Army (SWANCC)* in 2001 and *Rapanos v. US (Rapanos)* in 2006. S. 1870 is sponsored by U.S. Sen. Russell Feingold (D-WI).

“The citizens of New Mexico rely on federal and state protections that ensure a clean environment and a sustainable water supply,” Governor Richardson said. “This legislation would restore the Clean Water Act and would protect New Mexico’s and the nation’s waters now and for future generations.”

“Nowhere have the limitations created by these Supreme Court decisions been felt more acutely than in the desert Southwest,” said New Mexico Environment Department Secretary Ron Curry. “Those Supreme court decisions narrowed the scope of waters protected under the Clean Water Act, leaving uncertain protection for closed basins which cover up to one fifth of New Mexico, non-perennial waters which make up more than 90 percent of our state’s water bodies, 4,000 playa lakes, and numerous headwaters, springs, cienegas and isolated wetlands .”

The hearing, before the Senate Committee on Environment and Public Works, is entitled “The Clean Water Act following the recent Supreme Court decisions in *Solid Waste Agency of Northern Cook County* and *Rapanos-Carabell*.”

The hearing will be held at 9 a.m., Thursday, Dec. 13 in Room 406 of the Dirksen Senate Office Building.

S. 1870 restores the jurisdiction of the 1972 landmark federal Clean Water Act by replacing the phrase “navigable waters” with “waters of the United States.” That clarification would help remove confusion created by the two Supreme Court decisions that limited waters that receive protection under the Act. U.S. Reps. James Oberstar, D-Minn., John Dingell, D-Mich. and Vernon Ehlers, R-Mich. introduced a similar bill, H.R. 2421, in the U.S. House of Representatives. U.S. Rep. Tom Udall, D-N.M. is a cosponsor for that bill.

Prior to the SWANCC and Rapanos Supreme Court rulings, the scope of the Clean Water Act was interpreted broadly to provide protection for of all the nation's water bodies. After the rulings, there has been great uncertainty regarding what waters are protected.

In effect, the Supreme Court ruled there are 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. In March 2003, he 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 the recent Senate and House bills.

More recently, Governor Richardson successfully opposed oil and gas drilling in the Valle Vidal or 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. Governor Richardson also recently launched a multi-million dollar effort — the first in state history — to provide a state funding source for river ecosystem restoration. But without lasting federal Clean Water Act protection, the state's efforts to restore and defend its waters could be severely eroded.