

## *Trump's plans to strip clean water protections leave New Mexico fearing pollution and health risks*



*Vicente Fernandez's family has lived in Taos Valley for generations. He worries that a rollback of clean water rules will lead to more pollution flowing into vital waterways. (Morgan Timms / For The Times)*

By [Anna M. Phillips](#) Dec. 31, 2019 3 AM Taos, N.M. —

Twice a day, every day, Vicente Fernandez walks along the banks of the Rio Fernando, inspecting the river that has shaped his valley's fortunes for generations.

Like his father and his grandfather before him, Fernandez is a *mayordomo* — the manager of a centuries-old network of irrigation ditches called acequias that divert water from the river into nearby fields. Hundreds of families in the Taos Valley rely on it to nourish their gardens and fruit trees and to replenish the aquifer they depend on for drinking water.

But the future of the Rio Fernando and its acequias is murky.

Early in the coming year, President Trump's Environmental Protection Agency plans to [roll back clean water rules](#), abolishing limits on how much pollution can be dumped into small streams and wetlands.

Federal data suggest 81% of streams in the Southwest would lose protections. A large share of streams in California and other Western states will be hard hit.

Nowhere are the stakes as high as in New Mexico. Environmental regulators in the state estimate that the new rule could leave 96% of the state's waterways and wetlands unprotected from

pollution from coal mines, factory waste, pesticide runoff and other sources.

And New Mexico does not have its own regulations to fill the void, which makes its waterways particularly vulnerable.



*Enrique Romero, a lawyer for the New Mexico Acequia Assn., and Joe Fernandez walk along Rio Fernando. (Morgan Timms / For The Times)*

State officials warn that major tributaries to the Rio Grande could lose long-held protections, increasing the likelihood that pollution would flow into the state's most important river. They include segments of the Rio Puerco, the river's largest tributary in central New Mexico, and the Santa Fe River, which provides 40% of the city of Santa Fe's drinking water.

Portions of those rivers are considered ephemeral, meaning water flows only occasionally due to rainstorms and snow melt. Ephemeral waterways (sometimes called washes or arroyos) are common in Western states and are likely to become more so as warming temperatures make a dry climate drier.

These waters were subject to Clean Water Act protections under Presidents George W. Bush and Obama. They would not be under the new rule.

"We're not just talking about little drainages, though those little drainages are critically important," said Rachel Conn, projects director for the Taos-based environmental group Amigos Bravos. "It's also these larger iconic New

Mexico rivers that are on the chopping block and potentially open for pollution."

The proposal has left New Mexicans worried about how they will be able to defend their rivers and streams from upstream polluters.

"What's to keep people from coming in and doing what they want?" Fernandez said. "If you take the protection away from the river, they'll say that's just a non-river, the hell with it."

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Vicente Fernandez

On a snowy day in late November, Fernandez and his brother Joe hiked along a trail leading into the mountains, where the Rio Fernando's headwaters begin and its path meanders south to its confluence with the Rio Pueblo.

Cottonwood and willow trees crowded the river's narrow banks and the water flowed steadily. To an outsider from the East Coast or the Pacific Northwest, it might look more like a stream than a river.

The water appears clean, but runoff from grazing cattle and faulty septic tanks has polluted it, leaving the river with above-normal levels of *E. coli* bacteria.

[Cleanup efforts](#) depend on continued money from the EPA, which could end if the river loses its federally protected status.

No one can be sure whether this will come to pass, Conn said, because there's no nationally agreed-upon standard for what constitutes an ephemeral waterway. The Rio Fernando, for instance, sometimes runs dry on the surface but always reappears, she said.



*“We’ve always taken care of the river,” Vicente Fernandez said. “It’s an uphill battle.” (Morgan Timms / For The Times)*



*BROTHERS Joe, left, and Vicente Fernandez manage the Rio Fernando and other waterways in Taos, N.M. The brothers worry the small streams that sustain the region are at risk of pollution from new federal rules. (Morgan Timms For The Times)*

The battle over whether and how to regulate waterways like the Rio Fernando has raged for decades. The Obama administration adopted a rule known as Waters of the United States, which expanded the reach of federal regulations and further restricted farmers’ ability to use pesticides and fertilizers on land that could drain into wetlands and streams. Agricultural groups, real estate developers, ranchers and dairy farmers viewed the regulations as illegal infringements on their property rights.

Although legal challenges prevented the Obama-era expansions from ever taking effect in New

Mexico and more than half the states, industry groups wanted them stripped from the books for good.

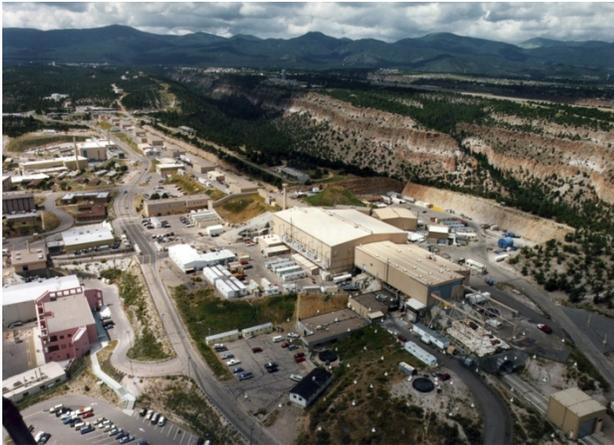
The Trump administration first [repealed the Obama rule](#). Now it plans to completely replace it.

From the state’s perspective, the Trump rollback would turn back the clock to the early 1970s, when public nuisance laws were one of the few legal tools courts could use to hold polluting parties responsible.

If the Trump plan survives legal challenges, polluters would no longer need a permit to release contaminated water into ephemeral streams and wetlands that aren’t immediately adjacent to protected waters. This would, according to New Mexico’s Environment Department, eliminate about 40% of the state’s water pollution permits, including those held by wastewater treatment plants, hard-rock mines and coal mines.

The effect this could have on the state’s drinking water is illustrated most starkly at Los Alamos National Laboratory, the former Manhattan Project site that serves as a center of the country’s nuclear research and development.

The 40-square-mile site where scientists built the first atomic bomb remains contaminated from that era.



*Los Alamos National Laboratory in New Mexico. (Associated Press)*

Permits that currently regulate stormwater runoff and industrial waste from the site would likely be canceled under the new rule because Los Alamos discharges into ephemeral streams. Federal regulation would no longer be in place to enforce agreed-upon limits on mercury, PCBs, volatile organic compounds and other pollutants.

Just downstream, more than 100,000 people in the city of Santa Fe and the surrounding county get most of their drinking water from the Rio Grande. During summer monsoonal rains and spring snowmelt, laboratory waste that's been dumped into the surrounding canyons runs into the river.

Many safeguards have been put in place over the years to prevent pollution from the lab from contaminating drinking water. But Alex Puglisi, Santa Fe's environmental compliance officer, said no one ever considered the possibility that the permits would no longer be required.

"Who knows what happens when those permits go away," he said. "The laboratory has told us they'll continue to take precautions, but there will be no federal regulations or state control over what they release."

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In a statement to The Times, laboratory spokesman Peter Hyde wrote that the facility regularly tests its air, water and soil and shares the results with the public.

"Protecting the environment in northern New Mexico is and will continue to be a priority for Los Alamos National Laboratory," Hyde wrote.

He added that it was premature to comment on what effect the new rule might have.

Trump's proposed rule does have supporters in New Mexico.

The administration's plan is a "vast step forward," said Caren Cowan, executive director of the New Mexico Cattle Growers' Assn., which represents about 1,400 ranchers.

As Cowan sees it, applying regulations to ephemeral streams is costly and has little environmental benefit.

The Obama rule, Cowan said, was written by Washington bureaucrats who didn't understand the Southwest. "Making a living in rural New Mexico with more and more regulations is diminishing our rural communities," he said.

Trump administration officials say they are restoring oversight to individual states, where it should be.

"The proposed definition would limit where federal regulations apply and would give states and tribes more flexibility to determine how best to manage waters within their borders," an EPA spokesman wrote in a statement to The Times.



*Water from the Rio Fernando and Rio Pueblo sustains the meadows and farmlands throughout Taos Valley. (Morgan Timms / For The Times)*

Few if any state environmental agencies and tribal governments, however, have the money, expertise and legal authority to replace federal regulation.

In California, [regulators have strengthened protections](#) for wetlands and streams in anticipation of a federal rollback. Other states are likely to fall back on rules they adopted years ago that may be more or less stringent than the federal ones they replace.

In New Mexico, Rebecca Roose, director of the state Environment Department's water protection division, said prospects for protecting

water quality if federal regulation goes away were uncertain because the state does not have a program to issue permits to polluters that discharge into rivers and streams, except in cases where groundwater is also affected.

The department would use its existing authority, she said, and it is considering ways to improve oversight. But she said that after years of budget cuts and staff attrition, the agency's watchdog powers have been considerably weakened.

A [recent study](#) by the Environmental Integrity Project found that between 2008 and 2018, the department lost 61 employees and nearly 27% of its budget.

Asked whether New Mexico was prepared to assume responsibility for all the waterways that will lose federal protection, Roose was skeptical.

"We don't have the staffing we need for our groundwater permits that are in place right now, let alone to cover the gaps created by the rule replacement," she said.

The nation's fifth-largest state by area currently employs only six water quality inspectors.

"I know. It's not OK," Roose said. "We are fighting for more resources right now with everything that we have."

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