

# HB 235 – Giving the State Game Commission authority over recreational stream access

House Bill 235 would allow the State Game Commission to permanently block New Mexico anglers from streams that the state Constitution and a state Supreme Court opinion say they should be able to access legally – provided they do not trespass to reach the stream.

New Mexico Wildlife Federation opposes HB 235 for numerous reasons, the most important being that **our Supreme Court settled the question of recreational stream access in 1945**. There is no legislation, short of putting a constitutional amendment before voters, that can trump the *Red River Valley* decision.

**HB 235 is NOT an issue of private landowners' interests versus public access interests, or who owns the streambeds.** It instead seeks to give ultimate control over recreational stream access to the State Game Commission when in fact the Supreme Court has already decided the issue.

HB 235 would give the Game Commission – a seven-member board appointed by the governor – the authority to decide which streams are navigable and which are not, and therefore which streams are open to the public for recreational use and which are not. **Under this bill, future Game Commissions could change the determination of navigability according to their own whims or political leanings.**

In fact, **the Game Commission for years has prevented the public from using a constitutional right** by proclaiming – without support – that stepping on a privately owned streambed is trespass. Because the Game Commission has wrongfully regulated public access to New Mexico waters in the past is no reason to give it additional power now.

Contrary to what some contend, the definition of “navigable stream” in New Mexico is immaterial.



*The New Mexico Supreme Court decided the question of recreational access to streams in 1945, but House Bill 235 would give that authority to the State Game Commission.*

Under the state Constitution, as interpreted by our Supreme Court in 1945, all natural waterways in New Mexico are navigable and therefore public.

The *Red River Valley* decision is still binding state law. It discusses the public nature of streambeds and recognizes the public's prior appropriated right for recreational purposes. This is what continues to give the public an easement over any privately owned stream beds only for the purpose of recreational use. Additionally, because the state Constitution deems every natural stream in the state to be public waters, **ONLY a constitutional amendment can undo it.**

**The bottom line:** In New Mexico, it does not matter if the Game Commission or any other official or body deems a waterway to be navigable or non-navigable, open to public recreation or not. The state Supreme Court has found that all natural waterways are public waters for recreational purposes and the public retains an easement over any private property those streams pass over.