

WFG Underwriting Bulletin



To: All New Mexico Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: August 28, 2023
Bulletin No.: NM 2023-04
Subject: Exception for Access to Water Flowing Through Insured Land

In view of the recent New Mexico Supreme Court Decision of *Adobe Whitewater Club of New Mexico, et. al. vs. New Mexico State Game Commission, et. al* (No. S-1-SC-38195), please be very careful when insuring land that abuts or includes streams or rivers. The Court reached a number of interesting conclusions, including, without limitation, the following:

1. The unappropriated water of all natural streams in New Mexico belongs to the public;
2. Walking and wading on the privately owned beds beneath public water is reasonably necessary for the enjoyment of many forms of fishing and recreation; and,
3. The public has the right to recreate and fish in public waters and that this right includes the privilege to do such acts as are reasonably necessary to effect the enjoyment of such right.

Accordingly, WFG National Title Insurance Company requires that the following exception be included under Schedule B of the policy when the land contains or abuts a flowing stream or river:

SCHEDULE B EXCEPTION:

“Rights or claims of rights of the public to use of the beds, the banks and the water flowing through or adjacent to the insured land for fishing, wading and/or other purposes.”

Finally, please note that the Supreme Court also found that **the public may neither trespass on privately owned land to access public water, nor trespass on privately owned land from public water.** Accordingly, when examining title, please be particularly diligent in determining whether or not there is any evidence of an easement or other possible rights to access water lying within the boundaries of the insured land.

Should you have any questions or concerns regarding the above-referenced exception, please contact Christopher Cullen, New Mexico Underwriting Counsel at either (505) 988-7114 or nmlegal@wfgtitle.com.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company’s Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.