



Written by [Joe Wolverton, II, J.D.](#) on January 4, 2013

Feds Block New Mexico Man From Clearing Debris From Dry Stream Bed

The federal government is at it again: fighting to prevent citizens from improving their own property under the alleged authority of the [Clean Water Act of 1972](#).

The latest target of tyranny is Peter and Francoise Smith, a retired couple from Lone Butte, New Mexico.

Here's the on ramp to the story as provided by the [Santa Fe New Mexican](#):



Peter Smith said the 20 acres the couple bought in 2005 is near old ranch property in Lone Butte. An arroyo crosses about 1,000 feet of the property. Smith said he cleaned up glass bottles, beer cans and other trash from the arroyo, and periodically, he mowed back non-native, fast-growing salt cedar trees.

Smith said deep, eroded ruts in the arroyo threatened to flip over his tractor when he tried to mow. "So I went in and smoothed the ruts over," he said.

Gallina Arroyo is the name of the little stream that is giving the Smiths so much trouble.

Imagine being the sort of person who takes pride in your property, keeping it clean, being a good steward of the land only to have agents of the federal government come in and accuse you of violating federal law and threatening to fine you for your efforts.

"People dumped garbage down there, and there was a beetle infestation that took out a lot of the piñon," Peter Smith said, as [quoted by the Albuquerque Journal](#). He added that the some 600 dead trees he was removing were an undeniable fire hazard.

"The salt cedar was getting to the point it was so thick you couldn't walk through it. So I cleaned up as much as I could and tried to maintain it with a tractor and a Bush Hog," Smith told the *Albuquerque Journal*.

Now, imagine that the "law" the feds accuse you of breaking was designed to protect the "waters of the United States" and the dry stream bed you are clearing rarely has water flow through it at all.

Irrelevant, says the Army Corps of Engineers. According to the federal and state inspectors, the Gallina Arroyo has a "significant nexus" with the Rio Grande River. In case you're wondering, the Rio Grande River is about 25 miles from where the mostly dry creek runs through the Smith's property.

"Basically, it discharges, eventually, into the Rio Grande," said William Oberle, project manager with the Corps' Albuquerque District regulatory division, as quoted in the *Albuquerque Journal*. "It's a tributary, to make it simple."

According to documents filed in the lawsuit, the Gallina Arroyo may be mostly dry and far removed from any significant waterway, but when water does flow through it, that water occasionally empties into other arroyos, that in turn empty into bigger arroyos that eventually empty into the Rio Grande.

Lest anyone think Peter and Francoise are muckrakers and are out to "git the gubmint," comments



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made by Mr. Smith to the *Santa Fe New Mexican* make it clear that he respects the law. “The main point is that it is not the waters of the United States,” Smith said. “It would be different if it was a flowing river going through there, but the thing is dry.”

Regular readers will be familiar with the federal government’s ferocity when it comes to exercising unlawful dominion over the privately owned property of citizens of the several states.

Remember the [Sacketts of Idaho](#)?

Soon after buying their dream home near Priest Lake, Idaho, Mike and Chantell Sackett ran afoul of the Environmental Protection Agency (EPA).

In May 2007, the Sacketts started laying some gravel when EPA agents showed up. The bureaucrats brought with them an EPA compliance order instructing the Sacketts to immediately cease construction on their home.

The “injunction” issued by the EPA informed the Sacketts that their .63-acre lot was a federally protected wetland. The Sacketts were dubious about this assertion given that they had a bundle of permits and that their land abuts several other residential lots and that the entire area was zoned for residential purposes.

Despite demonstrating to the feds that their property was not near any wetlands, they were ignored and were told that every day they failed to conform to the mandates of the order would cost them \$32,500 in fines.

The Sacketts took their case to the Supreme Court, which sided with the Sacketts in a [9-0 decision handed down in March 2012](#).

The Smiths hope the law will eventually be on their side, as well.

After a neighbor complained about Smith’s activity on the arroyo, the Army Corps of Engineers sent Smith a letter claiming he was dredging and filling a protected waterway of the United States without a permit.

Just what was the evil that Smith was up to that was choking off the waterways of the United States? As reported by Michael Haederle of the [Los Angeles Times](#):

A bark beetle infestation killed hundreds of the piñons, so Smith decided to cut and chip them to reduce fire danger. He also cleared trash that had been dumped in the arroyo — including old sofas and car seats.

Smith also removed the brush that was growing there and smoothed out 2- to 3-foot-deep eroded channels so he could maneuver his equipment.

By smoothing out those channels, the Corps contends, Smith is threatening the lives of minnows who live in the Rio Grande. “The Federally-endangered Rio Grande silvery minnow is present within the Rio Grande near the confluence of Galisteo Creek and the Rio Grande,” the government writes in its report.

If Smith isn’t stopped, the minnows could be lost.

“It wouldn’t happen overnight,” Oberle said of the demise of the fish. “But sooner or later, it’ll get down to the river.”

After receiving the letter from the Corps, Smith decided to study the relevant law and even enrolled in a course. In his research he ran across the name of the [Pacific Legal Foundation](#). He contacted the



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libertarian-leaning organization and they agreed to help the Smiths fight the feds — pro bono.

“I’m just waiting for the thing to be decided,” he said. “If I’m not too old and frail, I’ll get back to work.”

Working to pay off the federal government. Has a familiar ring to it, doesn’t it?

“We’re aiming to stop federal regulators from becoming a national zoning board with unlimited control over land use, from coast to coast,” said Jennifer Fry of the Pacific Legal Foundation. “They [the Army Corps of Engineers] must be subject to court review when they make a jurisdictional determination that someone’s property is covered by the Clean Water Act.”

“If the federal government can tell the Smiths what they can and can’t do on their own land, by twisting the Clean Water Act and essentially using a divining rod to conjure a ‘water body’ out of dry soil, then no property owner, anywhere, is safe from federal intrusion,” she added.

The case will be heard by the 10th Circuit Court of Appeals.

The New American will continue to follow this story of federal persecution of landowners.

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