

**STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION**

**IN THE MATTER OF
PROPOSED NEW RULE 19.25.16
NMAC – Regional Water Security Planning**

No. NMISC 25-01 (R)

**New Mexico Interstate Stream
Commission, Water Planning
Program,**

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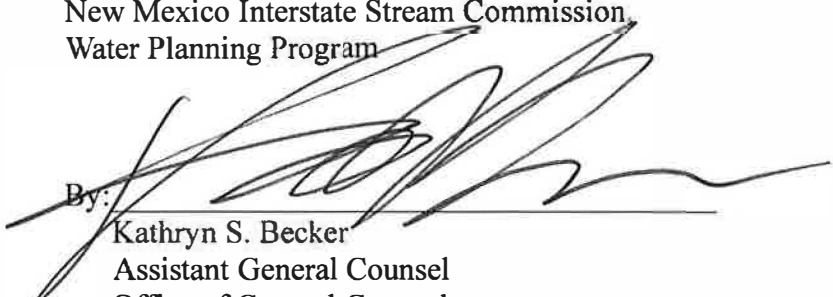
**NOTICE OF SUPPLEMENTAL FILING OF COMMENTS
RECEIVED AFTER CLOSE OF PUBLIC COMMENT PERIOD**

The Water Planning Program (“Program”) of the New Mexico Interstate Commission hereby submits the attached additional comments received between October 1, 2025 and October 14, 2025.

DATED this 14th day of October, 2025.

Respectfully submitted,

New Mexico Interstate Stream Commission
Water Planning Program

By: 

Kathryn S. Becker
Assistant General Counsel
Office of General Counsel
407 Galisteo Street
Santa Fe, NM 87501
kathryn.becker@ose.nm.gov

CENTRAL TRI-COUNTY SOIL & WATER CONSERVATION DISTRICT

HELPING PROTECT, RESTORE, ENHANCE, AND PROMOTE THE WISE USE OF NATURAL RESOURCES

September 18, 2025

Andrew Erdmann
Water Planning Program Manager
Interstate Stream Commission
PO Box 25102
Santa Fe, NM 87504-5102
Re: Water Planning Region Evaluation

Dear Mr. Erdmann,

The Central Tri-County Soil and Water Conservation District (SWCD) is writing on behalf of the Estancia Basin Water Planning Committee (EBWPC). We would like to provide feedback on the New Mexico Water Security Planning Act Draft Rule and Guidelines.

The EBWPC was established in 1995 to provide local leadership for regional water planning. Central Tri-County (formally Edgewood) SWCD has had a representative on this committee since it began. The EBWPC has met on a regular basis since 1995, participating in three rounds of regional water planning efforts.

The Central Tri-County SWCD supports the refined basin boundaries based upon hydrological rather than political boundaries. We appreciate the efforts of the ISC to broaden and strengthen local networks and develop new opportunities for funding water management at the local level. We look forward to participating in four of the new councils (Middle Rio Grande Council, Proposed Estancia Council, Central Basin Council, and the Pecos Council) proposed by the ISC.

We support the EBWPC's request that the Estancia Basin remain separated from other closed basins to our south, rather than becoming part of the Central Basin Council. Wrapping the Estancia Basin into the proposed Central Basin would be detrimental to the long-term regional water planning process that has been established in the Estancia Basin for the past thirty years.

We appreciate your consideration of the EBWPC history and progress as you evaluate the draft rule.

Sincerely,



David W. King
Chair

Cc: EBWPC

CENTRAL TRI-COUNTY SWCD

PO BOX 3450
MORIARTY, NEW MEXICO 87035

ALBUQUERQUE NM 870

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Andrew Erdmann
Water Planning Program Manager
Interstate Stream Commission
PO Box 25102
Santa Fe, NM 87504-5102

87504-510202





PUEBLO OF SANTA ANA

OFFICE OF THE LT. GOVERNOR

26 September 2025

Mark Sanchez, Chairman
NM Interstate Stream Commission
Bataan Memorial Building
407 Galisteo St. Suite 101
Santa Fe, NM 87501
ISC.Commission@osc.nm.gov

**Re: Support for the Water Security Tribal Advisory Council's (WSTAC)
Recommendations on the WSPA Proposed Rule**

Dear Chairman Sanchez,

We are writing to notify the Interstate Stream Commission that the Pueblo of Santa Ana has reviewed the Water Security Tribal Advisory Council's (WSTAC) Recommendations on the Water Security Planning Act (WSPA) Proposed Rule and offers our full support for these Recommendations.

We appreciate the opportunity to participate in this process. Please keep us informed of the details surrounding the October 15-17, 2025, hearing on the new Proposed Rule.

Sincerely,



Pueblo of Santa Ana
Kevin C. Montoya, Lt. Governor

Pueblo of Santa Ana
2 Dove Road
Santa Ana, NM 87004

ALBUQUERQUE NM 870

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Mark Sanchez, Chairman
NM Interstate Stream Commission
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135 CAPITOL SQUARE DRIVE
ZIA PUEBLO, NM 87053-6013

PHONE (505) 867-3304
FAX (505) 867-3308

September 26, 2025

Mark Sanchez, Chairman
NM Interstate Stream Commission
Bataan Memorial Building
407 Galisteo St. Suite 101
Santa Fe, NM 87501

Re: Support for the Water Security Tribal Advisory Council's (WSTAC) Recommendations on the WSPA Proposed Rule

Dear Chairman Sanchez,

We are writing to notify the Interstate Stream Commission that the Pueblo of Zia has reviewed the Water Security Tribal Advisory Council's (WSTAC) Recommendations on the Water Security Planning Act (WSPA) Proposed Rule and offers our full support for these Recommendations.

We appreciate the opportunity to participate in this process. Please keep us informed of the details surrounding the October 15-17, 2025, hearing on the new Proposed Rule.

Sincerely,

Lambert Pino, Governor
Pueblo of Zia

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FROM

PUEBLO OF ZIA



135 CAPITOL SQUARE DR.

ZIA PUEBLO, NM 87053-6013

TO: Mark Sanchez, Chairman
NM Interstate Stream Commission
Bataan Memorial Building
407 Galisteo St. Suite 101
Santa Fe, NM
87501



STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION
IN THE MATTER OF THE PROPOSED RULE TO IMPLEMENT
THE WATER SECURITY PLANNING ACT
Rulemaking No. 25-01(R)

**EXPERT TESTIMONY OF BOB WESSELY, PAST PRESIDENT, ON BEHALF OF THE
NEW MEXICO WATER ADVOCATES**

An Introduction to the Water Advocates' "Improved Proposed Rule Redline"

Madam Hearing Officer and Commissioners

- Thank you for the opportunity to speak on behalf of the New Mexico Water Advocates. My intent is to explain a product we have developed for you, the Commissioners, to use:
 - We have assembled a draft "Improved Proposed Rule" that we believe can serve for you to use to mark up during your deliberations later in this hearing. The document we are presenting is a redline markup of the ISC staff's "Proposed Rule." It addresses the concerns we have had with the ISC staff's proposed rule, as well as many of the comments that have been posted on ISC's website. We believe it can serve you as a better baseline for your editing during your deliberations.
- However, before the explanation, let me divert for some brief background - of me and of the product we are providing you today:
 - My background: Most of my paid career was as technical director of a 22-person systems engineering management consulting company. One of the key themes through those decades of work was structuring and developing requirements for computer procedures and for people procedures - precise enough to be unambiguously compelling, while not overly constraining on the implementers. After retirement from paid work, I wound up co-leading the Water Assembly and the development of the 2004 Middle Rio Grande regional water plan and working continuous water planning efforts since. As an offshoot, I became heavily involved in the initial drafting and the promoting of later drafts of materials that eventually led to the 2023 Water Security Planning Act.
 - The "Improved Proposed Rule" product we are providing today is an outgrowth of a substantial work effort. The first draft was in March '23, and was followed by a 30-month large-team effort including regular contact with ISC staff and open houses, resulting in this, our 93rd draft rule.
- The product for the Commission's use has four parts:
 - Exhibit B-1, a brief rationale of the changes we seek to the ISC staff's "Proposed Rule" to create an "Improved Proposed Rule"
 - Exhibit B-2, a brief paragraph-by-paragraph rationale or reasons for change, along with Microsoft Word's tracked changes paragraph-by-paragraph improvement markup to the "Proposed Rule"

- Exhibit B-3, an acknowledgement and listing of the NMWA team of a dozen and a half experienced people, almost all of whom worked on the “Improved Proposed Rule.” About half a dozen of them worked well into the weeds, others as brief reviewers.
- Exhibit B-4, my resume.
- Now, let me summarize the “Improved Proposed Rule” - summary rationale, and the paragraph-by-paragraph reasons for change of each paragraph in the redline markup.
 - Exhibit B-1 has a summary of our rationale for making suggested changes to the “Proposed Rule.” The unanimously passed 2023 Water Security Planning Act (WSPA) presents a once in a generation opportunity to seriously address New Mexico’s long neglected, serious current and growing water shortfalls. We believe the rules that we are working on today should take vigorous advantage of that opportunity.

As is detailed by testimony and exhibits, the ISC staff’s “Proposed Rule” provides for a limited interpretation of the WSPA guidance and a top-down or centralized planning rather than a regionally and community driven approach. For example, the “Proposed Rule” specifies council membership slots per ISC staff’s concept of interest balance, rather than criteria for membership, and requires ISC staff approval of replaced members. Further, the “Proposed Rule” does not lay out a water resiliency improvement objective (why plan at all) or a process (necessary planning components) to reach such an objective.

To meet the WSPA requirement for scientific integrity in the planning, we believe each region must start with a foundation of knowledge of their respective water situations, develop an understanding of their respective regions values, and then follow an organized process to develop a well-vetted, preferred alternative program of policies and projects whose implementation will provide regional resiliency to our changing water situations.

Since the ISC planning staff did not consider an earlier draft rule we submitted, let me summarize the “Improved Proposed Rule” in Exhibit B-2. The Exhibit contains our suggestions for each of the paragraphs’ reasons for change and our suggested specific changes to the text of the paragraph:

- 19.25.16.6 Objective - We provide and recommend replacement text to express a purpose and rationale for the planning process.
- 19.25.16.7 Definitions - We recommend adding some and revising other definitions..
- 19.25.16.10 Initial Planning Period – We’ve added language to flesh out the requirements. Subparagraph A now explicitly lays out requirements (rather than just descriptions) for ISC staff to fund and support a truly robust and effective regional planning process. In Subparagraph B, to meet the guidance of WSPA, we placed process requirements on regional councils to conduct their planning, while providing maximum freedom to account for differences among regions.
- 19.25.16.11 Ongoing Planning Period - We’ve edited the wording with the intent to balance better between being overly top-down prescriptive and being silent on key attributes

- 19.25.16.12 Composition of Regional Councils - We have replaced the existing words to provide criteria for membership in the councils rather than the imposition of ISC staff's concept of creating balanced regional councils. This should enable each region to develop its council and will define balanced interest representation as appropriate for the particular region.
- 19.25.16.14 Considerations for Councils During Planning - we recommend a small quantity of changes to make meeting statewide objectives and scientific data mandatory in the planning processes.
- 19.25.16.15 Criteria for Approval of Plans - We recommend leaving the "Proposed Rule" text as is stands but inserting two precursor Subparagraphs A and B to provide actual approval criteria before the "Proposed Rule's" specification of required plan content.
- 19.25.16.16 State Engineer Considerations - We believe this rule is not the place to impose requirements on the State Engineer. We recommend changing the title and text of this paragraph to address the WSPA requirement concerning reporting issues to ISC staff. We also recommend creating a new paragraph 19.25.16.17 to deal with WSPA's intent for regions to define and make use of their respective public welfare values.
- 19.25.16.17 Public Welfare and Values Statement for the Region - This paragraph has new text for regional councils to develop their own statement of public welfare and values for use in planning evaluation.
- Again, Exhibit B-3 is the acknowledgment listing and Exhibit B-4 is the resume.
- In Conclusion - We believe the "Improved Proposed Rule" forms a good basis for the Commission to ingest its desires, including those stimulated by other public comment, public comment, testimony and exhibits. However, we would request an opportunity to submit an updated redline after we have all been educated through the course of the hearing.
- While I'm not sure how it can be fit into this formal hearing process, we, the Water Advocates, would be pleased to work with the Commission during that ingestion process, only to help ensure Commission-desired changes are incorporated consistently with the various interacting sections of this very detailed "Improved Proposed Rule."
- Thank you again for giving serious consideration to our recommendations. I can stand for questions.

Respectfully submitted,
New Mexico Water Advocates

_____/s/____

By: Bob Wessely
 Past President, appearing *pro se*
 Signed: October 14, 2025

New Mexico Water Advocates (NMWA)
Submission to the 2025 Formal Rule Promulgation Process
under the
2023 Water Security Planning Act (72-14A NMSA)

Recommended Improvements to the NMISC Staff’s “Proposed Rule”
Submitted As a Word Document Redline

Exhibits



Table of Contents

- Exhibit B-1 - Rationale for Improvements to the “Proposed Rule” – Summary
- Exhibit B-2 - Reasons for Change and Proposed Improvements
- Exhibit B-3 - Acknowledgements
- Exhibit B-4 – Resume of Dr. Wessely

Exhibit B-1

Rationale for Improvements to the “Proposed Rule” – Summary

New Mexico must face up to its current and growing water shortfalls. New Mexico has a diverse set of regions whose water needs and problems must be well-addressed for the future economic and cultural well-being of the state. The unanimously passed 2023 Water Security Planning Act (WSPA, 72-14A NMSA) presents a once in a generation opportunity to competently address those needs and problems.

The ISC staff's “proposed rule” provides for a limited and top down (ISC controlled) planning process, contrary to the statutory words and intent for a region/community driven process with support from the state. Further, the ISC staff's “proposed rule” does not lay out either an objective or a process to build the regions’ (and thus the state’s) resiliency. We are concerned that it would again result in “shelf reports”

The WSPA paragraph 4.C.(1) words “*at a minimum*” allow, and even encourage, development of rules beyond those explicitly called out in the WSPA paragraphs. The WSPA calls for, allows, and encourages each region of the state to conduct a highly public scientifically/data-based water planning process that, using local knowledge, will yield resiliency against current and growing water shortfalls in its region.

As indicated in 72-14-43 NMSA “The future water needs of New Mexico can best be met by allowing each region of the state to plan for its water future” with help from the state. The state should simply monitor and help regions with tribal liaison support, as-proposed funding support, and as-requested technical support to allow the regions to build their respective water resiliency programs.

To develop regional plans whose implementation will create the needed resiliency under the guidance and direction of WSPA, the following framework for rulemaking is designed to establish a robust regional/community-driven water planning process. The resulting state supported highly public and scientifically based water security planning process should enable each region to:

- self-organize a regional council to conduct the water security planning process
- ensure the council represents, on a continuing basis, the diverse water interests in the region
- understand the region’s water availability situation, current and future
- understand the region’s demographically driven demands for water, current and future
- declare the region’s public welfare and values
- use community and regional knowledge to identify possible remedial policies and projects
- evaluate and prioritize such policies and projects
- select a preferred program (or package) of policies and projects that best meets the region’s public welfare and whose implementation would establish regional resiliency
- properly document its water resiliency planning and plan
- obtain state approval for implementation of the plan
- provide ongoing monitoring of the plan’s implementation
- provide ongoing monitoring of the region’s water and demand environments
- develop and seek state approval of plan updates based on the monitoring

Following the above rationale and framework, the Water Advocates have marked up the ISC staff's “proposed rule” to establish a “Revised Proposed Rule.” The “Revised Proposed Rule,” if approved, will yield a statewide regional/community water planning process. We expect the implementation of the products of that process can establish New Mexico’s needed current and future water resiliency.

Exhibit B-2

Markup of ISC Staff’s Proposed Rule

Reasons for Change Are In Red Type and Proposed Improvements Are Shown with Tracked Changes

Based on our dealing for nearly three decades with New Mexico’s regional water planning, the New Mexico Water Advocates have formulated a substantial partial comment, recommending specific changes to the ISC staff’s “proposed rule.” We have tried to present information in a way that will be convenient for the Commission to understand and make use of.

We present here an “Improved Proposed Rule” in the form of a paragraph-by-paragraph markup of the ISC staff’s “Proposed Rule”. For each paragraph, we start with a brief summary statement in red typeface of the rationale or reasons for any changes in that paragraph, or a statement that no change is needed from the ISC staff’s “Proposed Rule”.

Paragraphs 19.25.16.1 through 19.25.16.5 need no change.

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 25 ADMINISTRATION AND USE OF WATER – GENERAL PROVISIONS PART 16 REGIONAL WATER SECURITY PLANNING

19.25.16.1 ISSUING AGENCY: New Mexico Interstate Stream Commission, hereinafter the commission.
[19.25.16.1 NMAC – N, xx/xx/202x]

19.25.16.2 SCOPE: This rule implements the provisions of the Water Security Planning Act, Section 72-14A-1 NMSA 1978, and sets forth the processes and criteria for convening and establishing regional water security planning councils and developing and maintaining regional water security plans. [19.25.16.2 NMAC – N, xx/xx/202x]

19.25.16.3 STATUTORY AUTHORITY: Section 72-14A-1, et seq. NMSA 1978.
[19.25.16.3 NMAC – N, xx/xx/202x]

19.25.16.4 DURATION: Permanent.
[19.25.16.4 NMAC – N, xx/xx/202x]

19.25.16.5 EFFECTIVE DATE: xxxxxxxxxxxx xx, 2025, unless a later date is cited at the end of a section.
[19.25.16.5 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.6 OBJECTIVE does not cite WSPA's requirement, opportunity, and need for regions and communities to identify and address regional water problems, including current and growing water shortfalls.

WE RECOMMEND a revision similar to that written below in tracked changes.

19.25.16.6 OBJECTIVE:

A. Objective: The objective of this rule is to establish the Commission's requirements for New Mexico's regional water security program, as provided in § 72-14A-4(A), NMSA 1978. The rule empowers the nine geographical regions illustrated in Exhibit I to organize, plan, and act collectively to improve regional and statewide water security. Its purpose is to ensure that water planning functions as a problem-solving process grounded in science, data, and public participation.

B. Organization of Regional Water Security Planning Councils: The rule authorizes and directs the organization of nine regional water security planning councils corresponding to the regions shown in Exhibit I. It establishes requirements for the Commission to organize and convene councils and for councils, if they choose, to organize and convene themselves.

Representative groups within a region may apply to the Commission to receive funds to establish a council if the Commission determines the proposal would be helpful to the regional council's creation. Once a council is established and approved by the Commission, it may apply for additional funding to develop a detailed work plan.

C. Work Plan Development and Commission Support: Following any needed negotiation and upon Commission approval of the work plan, the council applies to the Commission to receive the best available data, expert services, grants, and staff assistance to implement the approved plan. Councils and the Commission work cooperatively to ensure that each plan is based on the best available science, data, and models describing regional water supply, use, and trends.

D. Council Responsibilities and Planning Process: Councils shall emphasize public communications and transparency. Councils shall transparently develop, document, and publicly report their work and progress; draft plan sections for public review and comment; obtain public review of the complete draft plan; submit the complete draft plan to the Commission; respond fully to review comments; and obtain Commission approval of the completed regional water security plan.

Each council shall provide opportunities for meaningful participation by credentialed experts, the public, local communities, and the Nations, Pueblos, and Tribes within its region. Councils shall acknowledge and respect tribal sovereignty, water rights, settlements, and water needs, and document how their work advances the public welfare and the needs of future generations of New Mexicans.

E. Plan Content and Outcomes: Each completed regional plan shall document the region's prioritization of policies, projects, and programs to improve water security. Plans shall demonstrate how the region's planning responds to the hydrologic realities of the region and to statewide objectives and constraints. Councils shall take full cognizance of those realities and produce vetted, prioritized, and implementable regional water security plans that define and document their consideration of the public welfare and the needs of future generations.

IMPROVED PROPOSED RULE – NMWA’s Recommended Revisions to ISC Staff’s PROPOSED RULE

F. Implementation, Tracking, and Updating: With Commission assistance, councils secure funding, implement their plan, and keep it current. They track and publicly report implementation progress, including progress toward achieving the mandatory planning outcomes specified in § 72-14A-5(C), NMSA 1978.

[19.25.16.6 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.7 DEFINITIONS for several additional terms are needed or modified to reduce the likelihood of multiple interpretations.

WE RECOMMEND revisions similar to those shown below in tracked changes.

19.25.16.7 DEFINITIONS:

- A. **"Commission"** means the New Mexico interstate stream commission authorized under Section 72-14-1 NMSA 1978.
- B. **"Communities"** means geographically bounded communities and communities of interest within subregions, including users of a discrete groundwater resource, that are the centers of subregional water planning because water problems arise in communities and solutions to those problems must be shaped there.
- C. **"Council"** means a body organized and convened in accordance with these Rules, with the authority and responsibilities delegated to regional water planning entities by the Water Security Planning Act and accountable for achieving the outcomes set forth in § 72-14A-5(B). The primary responsibilities of each Council are to assist and support the subregions and communities within its region in fulfilling their planning and implementation roles as agreed in work plans and to create and obtain approval of their regional water security plan that reconciles their water security problem analyses and solutions and presents their cooperatively developed, fully prioritized list of policies, programs, and projects (PPPs) to achieve the measurable mandatory outcomes.
- D. **"Initial planning period"** means the time period from the establishment of each council to the approval of its first regional water security plan by the commission.
- E. **"NMISC staff"** means the employees of the New Mexico interstate stream commission.
- F. **"Ongoing planning period"** means any time period following the initial planning period for each council. The ongoing planning period begins once an initial regional water security plan is approved by the commission.
- G. **"Policy"** means a definite course or method of action adopted by a governmental body under color of state law to guide and determine present and future decisions in managing water and related resources, specifying responsible entities and providing for implementation and compliance
- H. **"Project"** means a discrete infrastructure project of any size, undertaken to deliver a defined outcome within a set timeframe; projects may be integral components of broader programs.
- I. **"Program"** means an organized set of related policies and projects coordinated to achieve a defined goal or strategic objective in water management or planning.
- J. **"Regional water security plan" or "plan"** means a plan produced by a council, that meets the requirements described herein and is approved by the commission.
- K. **"Regions"** means the administrative planning areas delineated by the Commission as shown in Exhibit 1, *Regional Boundaries Delineation (Exhibit I to the Rule)*, within which subregions and communities collaborate to prepare integrated, science-based water security plans. Each region is responsible for reconciling all subregional analyses and solutions into a unified set of prioritized policies, programs, and projects that achieve measurable outcomes at the regional scale, including the reconciliation of all water-overuse matters.
- L. **"Region-specific stakeholder"** means a member of the public who is not a member of a council but has identified themselves to NMISC staff or a council as interested in engaging in the planning process for a specific region.
- M. **"Subregion"** means a tributary basin, hydrologically or hydrogeologically distinct aquifer, or other coherent area within a planning region that encompasses one or more communities sharing related water sources, problems, and management needs. Subregions are essential building blocks of regional water security planning in large administrative regions, providing the scale at which locally grounded analyses and actions can be integrated into a coherent regional plan.

[19.25.16.7 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.8 needs no change.

19.25.16.8 WATER SECURITY TRIBAL ADVISORY COUNCIL:

A. NMISC staff shall provide administrative support and facilitation, in coordination with the office of the state engineer and Indian affairs department, for the establishment and operation of a water security tribal advisory council ("WSTAC") comprising representatives of New Mexico Nations, Pueblos, and Tribes.

B. The purpose of the WSTAC is to provide a forum for input from New Mexico Nations, Pueblos, and Tribes to ensure that their sovereignty, water rights, water needs, and viewpoints are considered and incorporated in regional water security planning and other related activities as determined by the commission.

C. The participating Nations, Pueblos, and Tribes shall determine their own procedures and principles for the operation of WSTAC.

[19.25.16.8 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.9 needs changes to allow for planning communities within regions or subregions.

WE RECOMMEND revisions similar to those shown below in tracked changes.

19.25.16.9 REGIONAL WATER SECURITY PLANNING REGIONS:

A. The nine regional water security planning regions are shown in exhibit A, water security planning regions (map).

B. Subject to commission approval, regional water security planning regions may be subdivided into sub-regions consistent with the definition in 19.25.16.7.M within a planning region. In determining whether to approve a proposed sub-region, the commission shall use the following criteria:

(1) the basis, hydrological or otherwise, for the sub-region and what circumstances make the proposed sub-region distinct from the region;

(2) whether there is sufficient population and capacity within the proposed sub-region to engage in a transparent and inclusive planning process for the proposed sub-region;

(3) the impact of the proposed sub-region on the ability of the remainder of the region to engage in a transparent and inclusive planning process;

(4) the process for how the work of the proposed sub-region will be integrated with the regional water security plan(s) of associated regions, including the prioritization of projects, programs, and policies.

C. Regions and subregions may identify contained communities as defined in 19.25.16.7.B to enable, encourage, and support planning for local issues based on local knowledge.

[19.25.16.9 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.10 INITIAL PLANNING PERIOD does not direct an adequate planning process. The paragraph envisions too much in-line ISC staff approval in what should be reserved as regional processes. Further, the paragraph omits many of the obligations that must be imposed upon the ISC staff and councils to specify functions, functionality, outcomes, and accountability to achieve legitimacy for the resultant planning. This will constitute a robust process resulting in water security plans whose implementation will yield water resiliency for the regions, and thus for the state.

WE RECOMMEND revisions similar to those shown below in tracked changes.

19.25.16.10 INITIAL PLANNING PERIOD: During the initial planning period,

A. The NMISC staff shall:

(1) provide grants to an appropriate fiscal agent within each region defined in 19.25.15.9 to allow the region to self-convene a broad public process, to establish the initial membership of the regional council consistent with the requirements of 19.25.16.12. If self-convening doesn't occur in a timely manner, NMISC staff may perform the convening.

(2) provide grants to established Councils' fiscal agents for Councils to develop funding proposals that contain work plans for the Councils' water planning process and regional security water plan.

(3) establish guidelines for recommended practices, protocols or requirements for regional councils to conduct their regional water security planning consistent with 72-14A NMSA and these rules.

(4) prior to accepting any regional work plan funding proposals, develop guideline criteria for evaluating such proposals. These guideline criteria at a minimum shall provide for:

(a) clear identification of the water planning region requesting funds,

(b) reasonable proposed costs and timetables for completion of the planning process,

(c) adequate provisions for the notice of, review of, and comment on the regional water security planning proposal,

(d) satisfactory planned use of a water security planning process consistent with the requirements of 19.25.16.10.B,

(5) contract with established Councils to execute acceptable proposals using funds provided by NMISC staff and other available funds.

(6) provide councils with technical support, including assistance with accessing the best available and sufficient data, models, and science, templates to guide decision making, and compilations of existing plans and additional resources.

(7) support acquisition of state and federal implementation funding for approved regional water security plans.

(8) cooperate with federal and state agencies to jointly fund and conduct groundwater resources investigations, intended to make available reliable water data in regions where remaining available groundwater resources are uncertain or knowledge is insufficient to support water security planning

(9) provide regionally relevant inputs and guidance to Councils based on the WSTAC collaboration processes as described in 19.25.16.8.

(10) Refine, as necessary, the 19.25.16.14.C statewide goals and objectives for the overall planning and provide those to the regional councils

(11) each year before August 1, prepare and deliver to the Interim Committee on Water and Natural Resources a regional water security planning report describing:

(a) actual funding compared to requests for the current fiscal year,

(b) expenditures to date

(c) progress achieved since the most recent annual report,

(d) plans for regional water security planning during the coming fiscal year, and,

(e) legislative funding requests/requirements to meet those plans.

B. Once established with members through a broad convening process, each council shall:

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

(1) establish and update as needed its own operating rules or adaptation of NMISC staff-supplied templates for conducting water security planning which may include:

- (a) the roles and responsibilities of the council's members;
- (b) the duration(s) of the term(s) and term limits if any for council members;
- (c) methods for membership succession
- (d) the grounds and process for removing a member from the council;
- (e) mechanisms to assure ongoing membership balance consistent with

19.25.16.12.B

- (f) meeting and operating rules
- (g) needs for planning, technical and administrative staff,
- (h) the potential roles of committees and work groups;
- (i) procedures for administrative and financial management,
- (j) the decision-making process to be used by the council
- (k) the process for integration and engagement with communities and any

subregions.

(2) maintain cooperation and coordination with internal and external organizations throughout the planning process

(3) in recognition of the proposal evaluation criteria developed under 19.25.16.10.A.(4), prepare and deliver to the NMISC staff proposals for funding grants to conduct all or part of the necessary regional water security planning effort and develop a resultant plan of action. Such proposals shall include:

- (a) the regional council's work plans and plans for progress reporting,
- (b) any embedded subregions and communities' work plans,
- (c) any needs for planning, technical and support staff,
- (d) schedule milestones, and,
- (e) funding requirements.

(4) seek to obtain regional water security planning funds from outside of the NMISC staff

(5) support and facilitate subregion and community level water security planning which may

include:

groups,

- (a) public outreach and education to create and engage community planning
- (b) provide water security planning guidance,
- (c) provide funds in response to well-organized requests,
- (d) provide or obtain NMISC staff technical support as requested,
- (e) monitor subregion's and communities' financial and planning progress, and,
- (f) incorporate communities' planning information into the regional plan.

(6) Conduct an ongoing process to enhance water security across the region. The process shall include:

(a) establishing a quantitative understanding of the legal, hydrologic, and demand attributes of the region, yielding knowledge of the region's water situation and problems,

(b) extensive iterative interaction with NMISC staff, public, and communities by providing interim work products and ingesting inputs throughout the planning process,

(c) developing a coherent statement of public welfare and values of the region in accordance with 19.25.16.17,

(d) ensuring scientific integrity in the planning through use of data and models,

(e) requesting technical support from NMISC staff as needed,

(f) identifying potential infrastructure projects and administrative policies at regional and community levels to enhance regional water adaptability

(g) evaluating, such projects and policies against multiple criteria

(h) prioritizing such projects and policies in accordance with their evaluations,

(i) packaging groups of prioritized projects and policies into one or more

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

alternative programs,

(j) modeling or otherwise evaluating the alternative to programs to determine that, if implemented, they would meet the statewide goals and outcomes developed under 19.25.16.10.A.(10)

(k) selecting a preferred alternative program that best meets the declared public welfare of the region, and,

(l) creating a detailed plan for implementation of the preferred alternative program.

(7) Only if the regional council determines that implementation of a duly evaluated high-priority project or policy is sufficiently urgent, the regional council may pursue an interim plan element for that project or policy sooner than approval of the full regional plan. The interim plan element shall be submitted to the commission for approval, and, if needed, be subject to negotiated changes

(8) develop a regional plan document in recognition of the approval criteria stated in 19.25.16.15 which regional plan include:

- (a) the region's hydrological situation,
- (b) the statement of public welfare of the region,
- (c) description of the planning process that led to the regional plan,
- (d) a description of each recommended policy and project,
- (e) a summary of the project and policy evaluations,
- (f) a prioritized list of recommended infrastructure projects for the region,
- (g) a prioritized list of recommended administrative policies for the region,
- (h) the preferred alternative program for the region, and,
- (i) the implementation plan for the preferred alternative program.

(9) submit the regional plan to the NMISC staff and commission for approval, and if needed negotiate changes to obtain NMISC staff and commission approval for implementation

(10) provide quarterly summary progress reports to the NMISC staff including:

- (a) use of funds,
- (b) progress to date,
- (c) any difficulties encountered and possible paths to resolution,
- (d) cost or progress deviations from the proposed processes,

cost to complete, and,

- (e) near term plans.

[19.25.16.10 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.11 ONGOING PLANNING PERIOD is probably premature and would be better written in a few years after we all become smarter. However, it doesn't hurt to leave it in at this time. As written in ISC staff's "Proposed Rule", the subparagraphs are too prescriptive in some places (as in meetings) and too silent in noting needs for funding, etc. in other places.

WE RECOMMEND revisions similar to those shown below in tracked changes.

19.25.16.11 ONGOING PLANNING PERIOD: During the ongoing planning period.

A. The NMISC staff shall:

- (1) review and confirm compliance with 19.25.16.12 when council vacancies are filled.
- (2) providing administrative support and facilitation for councils as requested
- (3) provide councils with technical support as requested, including assistance with accessing the best available data and science, decision-making guides, compilations of existing plans, and resources to aid in tracking and reporting on implementation.
- (4) publish all regional water security plans developed by councils and approved by the NMISC staff and commission.
- (5) subject to appropriations, provide funding grants to regional councils consistent with submitted proposed work plans.

B. After approval of the initial water security plan, each council shall perform a continued publicly interactive planning process which may include:

- (1) proposing work plans to NMISC staff for funding ongoing efforts
- (3) monitoring changes to water supply and demand
- (3) addressing newly recognized issues at community and regional levels
- (4) filling vacancies on the council as they occur in accordance with 19.25.16.12(A).
- (5) preparing proposed regional water security plan updates and presenting proposed plans to the NMISC staff and commission for implementation approval
- (6) preparing proposed updates to regional water security plans and presenting proposed updates to the NMISC staff and commission for approval.
- (7) reviewing the operating principles for the council and making changes if needed.
- (8) aiding in and tracking plan implementation, including outcomes.
- (9) developing and maintaining region-specific lists of stakeholders and providing information to stakeholders about opportunities to engage in the planning process. The council may request NMISC staff support to carry out these responsibilities.
- (10) updating plans at least once every ten years.
- (11) providing semi-annual summary reports to the NMISC staff reflecting:
 - (a) use of funds,
 - (b) progress to date,
 - (c) any difficulties encountered,
 - (d) cost or progress deviations from the proposed processes,cost to complete, and,
 - (e) near term plans.

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.12 COMPOSITION OF REGIONAL WATER SECURITY PLANNING COUNCILS details the ISC staff's perception of how a region should represent interests of water stakeholders in a balanced way. Besides overweighting the balance away from actual stakeholders, the paragraph specifies too much complexity, unnecessary ISC staff involvement, and an unwieldy set of council members unlikely to create an agreed-upon useful product.

WE RECOMMEND a total replacement of the paragraph to provide criteria for, rather than specification of, the membership with revisions similar to those written below in tracked changes.

19.25.16.12 COMPOSITION OF REGIONAL WATER SECURITY PLANNING COUNCILS: Membership of a regional council shall be determined within the region with support as needed from the NMISC staff, subject to the following:

A. A regional council shall be self-selected and composed of at least six individual members and not more than twenty individual members having needed expertise. Each member may designate an alternate with similar interests to serve in the member's absence

B. The set of members collectively must represent water interests in the region, balanced for the region, among residential, community, commercial, agricultural, natural, technical and institutional interests, including water right owners and groundwater permit holders who depend on the shared water supplies of the region.:

C. In the event of conflict about membership balance or quantity within a region, the NMISC staff shall mediate, or arbitrate if necessary, to resolve the controversy.

D. Regional councils may hire planning, technical and administrative staff.

[19.25.16.12 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.13 needs no change.

19.25.16.13 REGIONAL WATER SECURITY PLANNING COUNCIL MEETING AND INPUT REQUIREMENTS:

A. Councils shall hold regularly scheduled meetings as follows:

(1) meetings shall be held at least four times per year during periods when the region's plan is being developed or updated.

(2) meetings shall be held at least two times per year during periods when the plan is not being developed or updated.

(3) councils shall provide at least 14-day notice of meetings or other activities to council members, the public, region-specific stakeholders, Nations, Pueblos and Tribes, and the commission, with NMISC staff support as needed.

(4) councils, with NMISC staff support, shall offer meetings for hybrid participation if practicable.

B. Councils shall develop regional water security plans through broad input. This shall include opportunities for the public, region-specific stakeholders, and Nations, Pueblos, and Tribes to be involved in the development, vetting and prioritization of PPPs. During the plan development or update of any plan, councils shall, with NMISC staff support, at a minimum:

(1) notify the public, region-specific stakeholders, and Nations, Pueblos and Tribes, including by distributing publicly available information regionally about the development of the plan, and opportunities for input, at regular intervals.

(2) provide in-person and virtual opportunities for input at council meetings.

(3) provide a minimum of 60 days for the public, region-specific stakeholders, and Nations, Pueblos and Tribes to provide input in person, via email, or through a website on proposed regional water security plans.

(4) make comments publicly available ahead of finalization of a regional water security plan to be presented for commission approval.

C. Councils shall consider a broad range of participation options for input, which may include but are not limited to:

(1) providing materials in languages in common use within the region (e.g., ASL, Spanish, Tewa, Navajo).

(2) hosting additional meetings, focus groups, listening sessions, open houses or other events.

(3) providing engagement resources (e.g., presentations, paper surveys) to local community partners with existing connections in rural areas.

(4) providing multiple in-person opportunities distributed throughout the region and expanded strategies for community engagement.

(5) providing meeting spaces or computer access and connectivity for remote participation.

D. To promote broad awareness and to encourage participation, council outreach efforts, with NMISC Staff support as needed, shall include, but are not limited to:

(1) educational content; and

(2) multimedia advertising of engagement opportunities.

(3) additional opportunities may be developed at the determination of the council.

[19.25.16.13 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.14 CONSIDERATIONS FOR COUNCILS DURING PLANNING PROCESSES. The paragraph allows (Subparagraph C) councils to treat the stated statewide objectives as optional. This is a contradiction of the requirements of WSPA 4.B.(9).(b). The paragraph requires (Subparagraph D.) councils to conduct planning without the benefit of needed hydrological data. This is contradiction of the WSPA 4.B.(7) requirement for scientific integrity.

WE RECOMMEND small revisions similar to those shown below in tracked changes.

19.25.16.14 CONSIDERATIONS FOR COUNCILS DURING PLANNING PROCESSES:

- A.** Councils shall consider, with resources provided by NMISC staff, the following information for inclusion in regional water security plans:
- (1) existing water plans and water resources planning initiatives;
 - (2) compliance with state water law, including recognition of established water rights;
 - (3) best available science for considering climate resiliency and increasing aridification;
 - (4) recognition and respect of federally recognized or reserved tribal water rights;
 - (5) access to water for domestic use;
 - (6) compliance with applicable federal water law;
 - (7) **a consensus definition of the region's** public welfare values;
 - (8) balancing water uses and the needs of future generations of New Mexicans; and
 - (9) public participation and comments.
- B.** Councils shall consider the following information for inclusion in any regional water security plan:
- (1) best available resources or methodologies for considering the needs of rural and urban places and populations within the region;
 - (2) groundwater management strategies and needs;
 - (3) regional food security and agricultural resilience; and
 - (4) water needs for healthy upland and riparian habitats and wetlands.
- C.** Councils shall comply with the following statewide objectives in any regional water security plan:
- (1) state obligations under interstate compacts;
 - (2) compliance with the Endangered Species Act and the prevention of serious harm to the habitats or wetlands of species that are threatened or endangered under state or federal law;
 - (3) implementation of water rights settlements, including local and federally executed Indian water rights settlements;
 - (4) the state's existing administration plans under the Active Water Resources Management program.
- D.** Councils shall develop and update regional water security plans as provided herein using the best available science, data, and models. Councils shall identify data gaps and seek further studies in their regional water security plans to fill such data gaps.
- [19.25.16.14 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.15 CRITERIA FOR APPROVAL OF REGIONAL WATER SECURITY PLANS. The paragraph specifies needed content of the plans but does not provide criteria by which the commission should approve/disapprove the plan. Those criteria should ask the commission to evaluate the sufficiency of the planning process and the effectiveness of the recommendations in the plan.

WE RECOMMEND the insertion of new subparagraphs A and B similar to those written below in tracked changes. We also recommend a correction of the cross reference in Subparagraph C.(7) to match our recommendations for Improvements to 19.25.16.10.

19.25.16.15 CRITERIA FOR APPROVAL OF REGIONAL WATER SECURITY PLANS: In order to be approved by the commission, a regional water security plan shall show compliance with these criteria:

A. Adequate Planning Process: the regional council prepared its regional plan or interim plan element through a coherent planning process that demonstrated:

- (1) evenly balanced participation: the regional council sought, documented, considered and acted upon stakeholder and public voices,
- (2) transparency: the regional council regularly brought the water security planning program work and progress to the public and facilitated public participation and comments
- (3) a scientific foundation: water security planning has taken full cognizance of the scientific foundation for planning provided by the ISC staff and commission and the regional plan demonstrates scientific integrity,
- (4) formal evaluation: proposed policies and projects that have been well vetted and grouped into alternative programs, including a no action alternative program, from which a preferred alternative program has been selected,
- (5) public welfare: the regional council's planning developed and adhered to a statement of current and future public welfare of the region as specified in 19.25.16.17,
- (6) tribal sovereignty: the regional council's planning took into account ongoing cognizance of tribal sovereignty and interests within the particular region, and,
- (7) natural water uses: the regional planning identified groundwater/aquifer, riverine, riparian habitat, and wetlands impacts and addressed how those impacts would be limited and balanced under reduced water availability due to increasing temperatures and aridity.

B. Adequate Planning Content: implementation of the preferred alternative program in the regional plan would:

- (1) close the gap between overall regional water demand and regional water supply,
 - (2) address any significant intraregional gaps between supply locations and demand locations,
 - (3) increase the long-term viability of the water planning region's water supplies and the water adaptability for current and future generation users,
 - (4) provide for reliable domestic water supplies for rural communities,
 - (5) protect riverine, wetlands, and riparian habitat and species values,
 - (6) include groundwater management plans,
 - (7) for regions containing perennial streams, surface water management plans,
 - (8) for regions containing interstate perennial streams, assure ongoing compliance with interstate compacts,
 - (9) achieve consistency with community, municipal and institutional water plans within the region, and,
 - (10) provide for the regional council to lead and manage regional plan implementation, monitor and report the outcomes, and prepare amendments and updates to the approved regional plan.
- C.** To meet the approval criteria in 19.25.16.15.A and 19.25.16.15.B, plans shall include documentation of the following items:

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

- (1) Water Security Tribal Advisory Council (WSTAC) engagement, involvement, information and recommendations;
 - (2) public notice under Section 19.25.16.13.A.(3);
 - (3) stakeholder engagement in the development, vetting and prioritization of PPPs;
 - (4) comments received, considered, and incorporated from stakeholders and the public;
 - (5) comments received from state and federal agencies;
 - (6) council consideration of public welfare values, balancing water uses and the needs of future generations of New Mexico in the region, if any;
 - (7) Council committees, working groups and/or sub-regions, if applicable, within a region;
 - (8) consideration of the regional water balance, including any projected reductions in water availability due to the impacts of climate change or other factors; and
 - (9) compliance with statewide objectives identified in Paragraph C of Section 14.
- D. Plans shall include documentation that the needs of rural and urban populations within the region were considered.
- E. Plans shall include a list of prioritized proposed projects, programs, and policies with each item ranked individually relative to all other PPPs on that sub-list region wide.
- (1) Each proposed PPP must list the sponsor(s) that intends to lead implementation of the PPP, including obtaining and administering any necessary funding for the PPP.
 - (2) PPPs shall be classified in accordance with the following readiness-to-implement stages:
 - (a) ideas stage;
 - (b) whether or not it is fully scoped; and
 - (c) rapidly implementable if funded stage.
 - (3) PPP types include, but are not limited to projects, programs, and policies that address the following:
 - (a) watershed health
 - (b) drinking water
 - (c) storm water
 - (d) wastewater
 - (e) water retention and delivery infrastructure
 - (f) water conservation resulting in a reduction of total water depletions
 - (g) education
 - (h) efficiency resulting in a reduction of total or per-capita water use
 - (i) water reuse
 - (j) aquifer storage and recovery
 - (k) aquifer recharge
 - (l) agricultural resilience
 - (m) development of new water resources
 - (n) river and riparian habitat and wetlands restoration
 - (o) livestock management
 - (p) alternative water administration strategies (under Active Water Resources Management, water markets or banks, voluntary shortage sharing, etc.)
 - (q) drinking water system regionalization
 - (r) asset management planning
 - (s) scientific studies
 - (4) Additional documentation for each PPP if appropriate shall include:
 - (a) existing or potential funding, including funding to match state or federal resources;
 - (b) ability to enhance regional water resilience or have long-lasting and sustainable benefits;
 - (c) the presence of multiple benefits or ability to meet multiple objectives;

IMPROVED PROPOSED RULE – NMWA’s Recommended Revisions to ISC Staff’s PROPOSED RULE

(d) substantial support from diverse stakeholders; or

(e) identification of interrelated PPP’s and potential enhanced benefits of implementing multiple PPPs in conjunction with each other.

(56) Councils may elect to repeat PPP list items in subsequent plans and updated PPP lists.

(6) Councils with sub-regions shall integrate all sub-regional priorities into a single prioritized list of PPPs for submittal to the commission with their plan. Processes for resolving sub-regional priorities alongside the recommendations of other sub-regions in the region shall be resolved by the council pursuant to its operating principles, as provided for in Paragraph (1) of Subsection B of 19.25.16.10 NMAC.

[19.25.16.15 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA’s Recommended Revisions to ISC Staff’s PROPOSED RULE

Paragraph 19.25.16.16 STATE ENGINEER CONSIDERATION OF REGIONAL ISSUES OF PUBLIC WELFARE IN PERMITTING DECISIONS. WSPA 4.C.(1).(c) asks for a procedure to report planning issues to the commission. The “proposed rule” does not appear to address that requirement.

WE RECOMMEND the revision of the title of this 19.25.16.16, to address the matter of “Issues” and a total replacement of the text in the paragraph with text similar to that written below in tracked changes.

Further, WSPA 4.C.(1).(e) asks councils to consider public welfare for their region. It does not seek to provide guidance or direction to the State Engineer for her interpretation of Public Welfare of the State. We believe the intent is to have each region decide what its public welfare and values are, for use in conducting the planning and in evaluating alternative recommendations

Accordingly, WE ALSO RECOMMEND the creation of a new paragraph 19.25.16.17 to address the matter of public welfare of the region with text similar to that written on the next page in tracked changes.

19.25.16.16 PROCEDURE FOR REGIONAL WATER SECURITY PLANNING COUNCILS TO DEVELOP AND PROVIDE NOTICE TO THE NMISC STAFF OF ISSUES

- A.** The issues to be reported may include problems such as:
 - (1)** needs for state level technical assistance or financial assistance,
 - (2)** difficulties in supporting at risk communities within the region,
 - (3)** delays affecting timely work product deliveries, or,
 - (4)** difficulties in coordination with internal or adjacent water planning agencies.
- B.** In response to reported issues, the NMISC staff shall promptly take necessary action to resolve the issue and get the regional council back on track. The actions may include
 - (1)** negotiated revision of the approved work plan,
 - (2)** supplemental funding
 - (3)** negotiation or mediation support, or,
 - (4)** provision of technical advice, data and modeling.

.[19.25.16.16 NMAC – N, xx/xx/202x]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

Paragraph 19.25.16.17 PROCEDURE FOR A REGIONAL WATER PLANNING COUNCIL TO CONSIDER PUBLIC WELFARE VALUES OF THE REGION AND THE NEEDS OF FUTURE GENERATIONS OF NEW MEXICANS. As noted in the introduction of 19.25.16.16, this is a new paragraph to address the matter of public welfare. WSPA 4.C.(1).(e) asks councils to consider public welfare for their region. It does not seek to provide guidance or direction to the State Engineer. The intent is to have each region decide what its public welfare and values are, for use in conducting the planning and in evaluating alternative recommendations.

WE RECOMMEND the creation of this new paragraph 19.25.16.17 with text similar to that written below in tracked changes.

19.25.16.17 PROCEDURE FOR A REGIONAL WATER PLANNING COUNCIL TO CONSIDER PUBLIC WELFARE VALUES AND THE NEEDS OF FUTURE GENERATIONS OF NEW MEXICANS:

Through a broad public process, regional councils shall develop a statement defining the public welfare of the region. Regional councils shall ensure their planning processes and recommendations take careful cognizance of welfare needs that might not be specifically or sufficiently represented among the regional council's membership. At a minimum, aspects to be considered for possible inclusion shall include:

- A.** understanding the legal, hydrologic, and demand attributes of the region
- B.** avoiding or minimizing impacts to disadvantaged communities within the region,
- C.** preserving non-renewable resources (aquifers) for future generations of New
Mexicans:
- D.** avoiding or minimizing impacts to wetlands, habitats of threatened or endangered
species,
- E.** avoiding or minimizing impacts to traditional communities' uses of water,
- F.** recognizing and respecting the property rights of water rights holders,
- G.** needs for economic growth and encouragement of new business opportunities,
- H.** ensuring consistency with internal and adjacent water planning processes,
- I.** avoiding or minimizing degradation of existing traditional and acequia water rights
and uses.

[19.25.16.17 NMAC – N, xx/xx/202x]

HISTORY OF 19.25.16 NMAC [RESERVED]

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

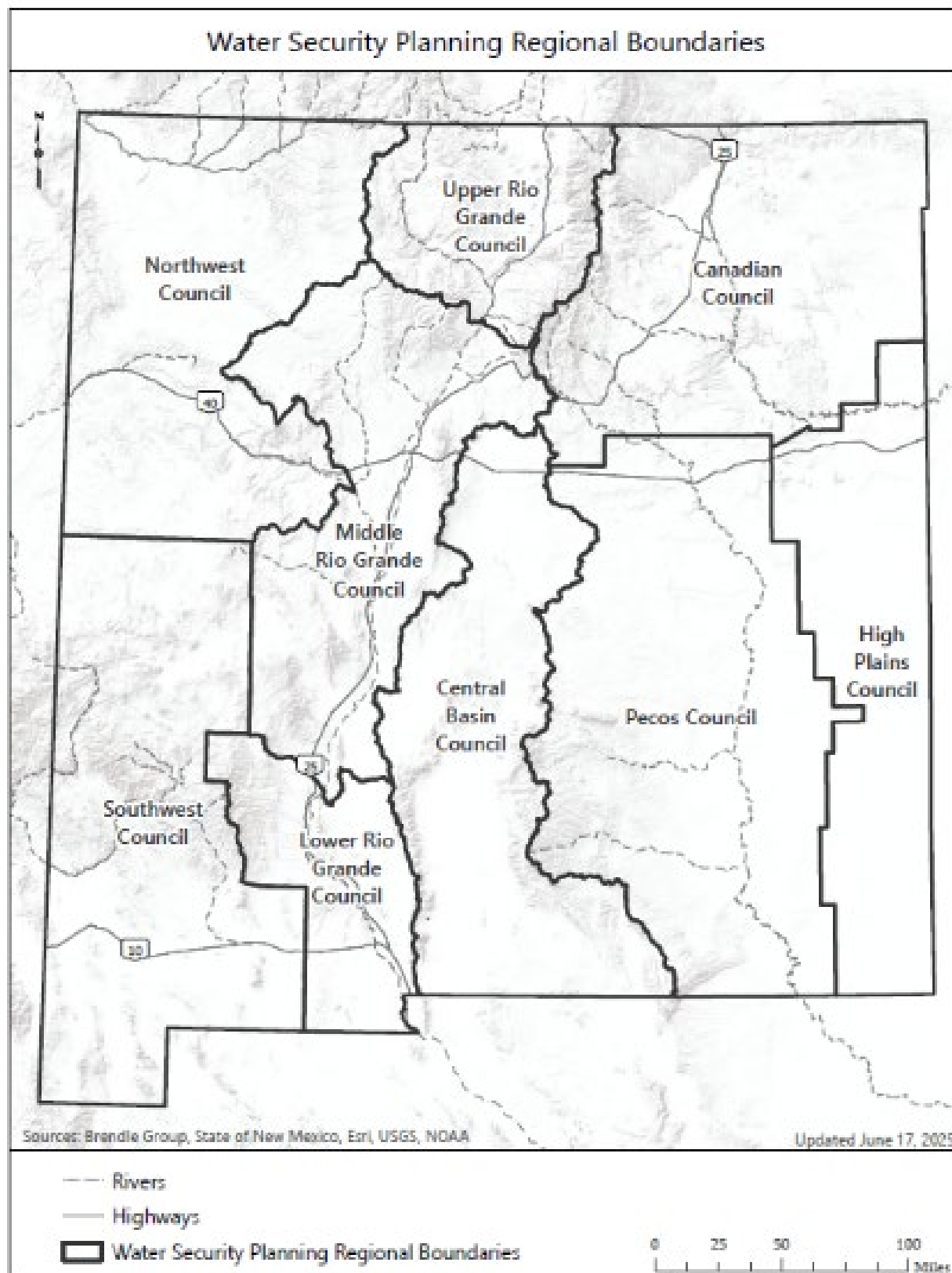


Exhibit B-3

Acknowledgements

We wish to express our appreciation to Water Advocates Board members and others who supported the 30-month effort and resultant product. Almost all these people participated at various times, in large or small roles, as part of the team that developed and critiqued precursor rule document drafts. These drafts were the source for our submissions to ISC staff and for our recommended markup improvements to the ISC staff's "proposed rule:"

Norm Gaume, BSEE, MSCE, P.E. (ret.), the President, is a water Professional and former director of the New Mexico Interstate Stream Commission.

Ann McCartney, JD, the Vice President, is a leader of the Valencia Water Watchers and is an attorney at the New Mexico Environmental Law Center.

Carolyn Kennedy, the Secretary-Treasurer, is District Manager for the Coronado S&WCD and has worked for more than 20 years as a paralegal with a prominent Albuquerque law firm.

Bob Wessely, Ph.D., the Past President, is a system engineer who co-led the development of the \$3 million Middle Rio Grande 2004 Regional Water Plan.

Brittany Gaume, MBA, a member of the Board, is a water rights consultant and works closely with the Office of the State Engineer.

Gillian Gonda, MA, a member of the Board, consults regularly as a communications advisor.

John Brown, B.A C.L. Harvard., M.A. UCLA, a member of the Board, is a policy analyst whose work has focused on the governance of common-pool resources, and who served for several years as executive director of the NM Water Dialogue.

Mihael, Marcus, Ph.D., a member of the Board, is a biologist and has been a member of the Endangered Species Act Collaborative Program.

Lynn Montgomery, a member of the Board, is the Chair of the Coronado Soil and Water Conservation District.

Ralph Wrons, a member of the Board, is a political activist and recreational advocate.

Rip Anderson, Ph.D. and Marcia Fernandez, MA, two members of the Board, are farmers and water activists in the Albuquerque South Valley.

Sarah Knopp, Ph.D. Candidate, a member of the Board, is a policy specialist for Amigos Bravos.

Betsy Diaz, Ph.D., an advisor, is regular committee participant and is a leading participant with the Interfaith Power and Light Organization.

Tricia Snyder, an advisor, on the improved rules design is the Rivers and Waters Program Director for New Mexico Wild.

Rachel Conn, an advisor, on the improved rules design is the Deputy Director of Amigos Bravos.

John Mumm, an advisor, previously a water planner with the ISC.

Exhibit B-4

270 County Road A3
Las Vegas, New Mexico 87701

Robert M. Wessely, Ph.D.

(505) 259-7842
wessely@sciso.com

Experience Abstract

Following a twenty-nine-year career as owner, founder, and technical director of an Albuquerque-based high tech system engineering company, Dr. Wessely turned his efforts toward improving the long-term viability and sustainability of New Mexico's water resources.

Water Related Experience – 1998 to Present

Middle Rio Grande Water Assembly, Albuquerque, New Mexico 1998 - Present
Chairman 2000 - 2004, Vice President 2005 - 2012, President 2013 - 2021

The Water Assembly (recently renamed MRG Water Advocates) developed and wrote the 2004 Regional Water Plan for Sandoval, Bernalillo and Valencia Counties in New Mexico. Dr. Wessely interactively directed and coordinated the planning process, including the public and governmental interaction, as well as the hydrological and modeling aspects. The multi-faceted role found Dr. Wessely deeply involved with the analyses of water science, engineering and technologies, presentations to lay personnel, and sometimes contentious mediations associated with the water issues involved in the planning process. Examples of the involvement include:

- reconciling various water budgeting approaches for the region
- understanding the aquifer status and rates of change
- dealing with fluctuations in annual inflows
- evaluating the relative feasibilities of candidate water saving technologies
- evaluating alternative proposed means for enhancing water supplies
- selecting from among varied urban conservation techniques
- delving into the practicalities of proposed agricultural efficiencies
- understanding and eliciting public attitudes and values
- balancing the implications of water rights legalities against the realities of available wet water and political exigencies.

New Mexico Water Dialogue, Albuquerque, New Mexico, Director 2014 - Present

The New Mexico Water Dialogue (NMWD) is a statewide entity that focuses on creating and maintaining dialogue among stakeholders and others concerning evolving water issues, particularly related to water planning. The NMWD designs and conducts an annual water issue symposium with diverse participants from around the state, including a convocation of ISC staff, NMWD Board members, and Regional Water Planners to address issues arising from the ISC's regional water planning project. The NMWD also developed the original guidance template for regional water plans and sponsored an "upstream-downstream" series of meetings to coordinate the regional water planning along the Rio Grande from Santa Fe to Socorro.

House Memorial 1 Working Group, Albuquerque, New Mexico, Participant 2015

The House Memorial 1 Working Group (previously called Governance Study Group) developed six issue papers, each paper identifying a shortfall in the current regional water planning process and proposing suggesting remedial actions. House Memorial 1 (2017) requested ISC to convene a Task Force to develop a water planning process proposal for the 2019 Legislature. In the absence of that, the HM1WG, developed a policy document *Making the Case for Change*, along with three proposed bills for the 2019 Legislature's consideration.

Las Vegas Community Water Board, Las Vegas, New Mexico, Member 2008 - 2022
President 2012 - 2022

The Community Water Board serves to stimulate the Las Vegas City Council and Mayor to address serious age-related deficiencies of the City's water infrastructure. The Board, and particularly Dr. Wessely, serves as ongoing advisor to the Utility Director and staff through the process of engineering studies, decision making, acquisition of external and internal funding, and project implementation for the City's water system.

IMPROVED PROPOSED RULE – NMWA's Recommended Revisions to ISC Staff's PROPOSED RULE

City of Las Vegas Utility Advisory Committee, Las Vegas, NM, Chairman 2010 - 2014

The Utility Advisory Committee provided monthly guidance and assistance to the City's Utility Director with emphasis on City water issues including the City's entire water system from water sources and storage through liquid waste disposal. At the same time, the City was experiencing severe drought which involved updating the City's regulatory regime. The Committee also provided advice to the Director on operations and maintenance of the City's heating gas system, recycle programs, and solid waste services,

Sandia National Laboratories, Albuquerque, New Mexico, Consultant 2004 - 2008

As a part of Sandia National Laboratories' desalination research program, Dr. Wessely was asked to develop a strategy for outreach to the public and small governments so as to help recipients base desalination decisions upon technical reality rather than rumor. As a part of the strategy that was developed, he defined and developed a computer-based visual model that will allow lay personnel to see, in real time, cost and design consequences of decisions relating to meeting the increasing water needs of their small communities.

Other Community Involvement – 2007 to Present

Las Acequias de Placitas, Parciante 2007 - Present; Private Acequia Parciante 1977 - 2008

Irrigator of fruit orchard in the Village of Placitas from Las Acequias de Placitas 2008 - Present.

As a member of the acequias, developed an Emergency Infrastructure Plan, unanimously approved by the membership. Irrigator from spring system of extensive fruit orchard at Rancho de Los Alamos (apples, apricots, plums, peaches, pears, cherries) four miles north of Placitas Village 1977 - 2008.

San Miguel, Mora, Sandoval, Bernalillo Counties, Advisor 2010 – 2020

Dr. Wessely served with area citizens as a neutral advisor concerning the development of reasonable oil and gas and mining ordinances in the respective counties. This involved research, presentations, drafting and critiquing ordinance drafts, and educating commissioners on the issues.

Other Work Related Experience – 1966 to 2000

SciSo Inc., Albuquerque, New Mexico, Co-Founder, Chairman, and Technical Director 1971 - 2000

A small business, SciSo was comprised of 30 professionals headquartered in Albuquerque, with a branch office in Virginia. As a principal of SciSo, an engineering management consulting company, Dr. Wessely managed the SciSo facilities and operations including technical execution and business development of projects in support of major DoD, DoE, DoT, NASA and NATO prime contractors as well as various commercial businesses (healthcare, manufacturing, electronics, petroleum). Among the projects, Dr. Wessely's technical role addressed most phases and aspects of system development, from concept through test and initial operation, and from project planning and coordination to evaluation of new technologies for use in the nascent systems.

Comarco, Inc. Yorba Linda, California, Member, Board of Directors 1974 -1994

During Dr. Wessely's tenure as member of the Board of Directors, Comarco grew from a \$3M to an \$80M provider of engineering services for DoD agencies as well as developer of selected wireless technologies for commercial uses.

RCA, Moorestown, New Jersey, Principal Engineer 1970 - 1971

Dr. Wessely led the development group for the AEGIS Command and Control system development during the formative years of the program

Radiation Service Company, Alamogordo, New Mexico, Research Physicist 1966 - 1970

Dr. Wessely played key role in missile test data reduction processes, including detailed interface with the various missile range test program user communities.

Education

Ph.D.	Rutgers University	Theoretical Solid State Physics	1966
M.S.	Rutgers University	Physics	1962
B.S.	Carnegie Mellon University	Physics	1960

State of New Mexico
Interstate Stream Commission
MOTION OF THE NEW MEXICO WATER ADVOCATES

Pro Se Filing in NMISC Rulemaking No. 25-01 (R)

I. INTRODUCTION

The New Mexico Water Advocates (“Movant”) respectfully submits this Motion to the Interstate Stream Commission (“Commission” or “ISC”) concerning the Proposed Rule filed July 17, 2025, to implement the 2023 Water Security Planning Act (“Act”).

Movant is a nonprofit, public-interest organization incorporated in New Mexico in 1998 to prepare the first regional water plan for four counties of the Middle Rio Grande. Today, Movant seeks to assist the Interstate Stream Commission (“Commission” or “ISC”) in fulfilling its statutory responsibilities under the 2023 Water Security Planning Act (SB 337, NMSA 1978, §§ 72-14A-1 et seq.). Movant has participated continuously for nearly three decades in statewide and regional water-planning efforts, consistently focusing on aligning water use with sustainable supply. Since its incorporation, Movant has advocated bringing New Mexico’s total water use into balance with its finite, overused, and declining water resources.

Movant appears in this proceeding through its president, acting pro se.

Movant shares the Commission’s understanding that time is of the essence. New Mexico’s current pattern of overuse cannot continue without grave, permanent consequences. As ISC Staff Exhibit 7, *Climate Change in New Mexico Over the Next 50 Years: Impacts on Water Resources* (NMBGMR Bulletin 164, 2022) and ISC Staff Exhibit 8, the *2022 Water Policy and Infrastructure Task Force Final Report* demonstrate, aridification and New Mexico’s failure to confront its water crisis threaten the State’s future. The Commission must act promptly and in accordance with law to establish a regional water-security planning framework that is science-based, socially equitable, durable, and results in solid implementable plans.

The Commission’s Motion and Order filed July 17, 2025, together with its New Mexico Register Notice of Rulemaking published August 26, 2025, contain the ISC staff’s Proposed Rule and the staff-determined process for the Commission’s promulgation. As filed, these documents and the staff process exhibit significant legal, procedural,

and substantive deficiencies that undermine both legitimacy and the planning program's potential effectiveness.

Movant submits this Motion not to delay the Commission's work but to help ensure that the rulemaking process and resulting rule comply with the Water Security Planning Act, the State Rules Act (NMSA 1978, §§ 14-4-1 et seq.), and controlling case law. The State Rules Act requires rulemaking to conform to judicial precedent that demands reasoned decision-making, procedural fairness, and a record adequate for review. Movant's purpose is constructive and cooperative: we recognize that timely adoption is essential to meet statutory expectations and climate-driven urgency. We stand ready to work with the Hearing Officer and all participants to identify procedural accommodations that maintain the schedule, comply with interested parties due process rights, and ensure all qualified parties can meaningfully contribute to the record.

Proceeding in this spirit of fairness and transparency will allow the Commission to complete its work promptly and consistent with law, laying a sound foundation for an effective regional water-security program for New Mexico.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Background

Recognizing that institutional reform is prerequisite to effective water governance, the Executive Branch convened the 2022 Water Policy and Infrastructure Task Force to identify structural changes necessary for sustainable water management.

Recommendation 2.2 urges New Mexico to “elevate regional planning in the face of increasing water scarcity to promote equity and build capacity to govern and manage water” (*2022 Water Policy and Infrastructure Task Force Final Report*, Appendix B, Recommendation 2.2).

Movant's president co-chaired the Task Force's Water Management and Planning work group that achieved full Task Force support for each of its eight recommendations. He prepared the conceptual framework of the Act and language that became the 2023 Water Security Planning Act, drawn directly from that Task Force recommendation. This complex, transformative legislation passed every committee and both chambers with rare bipartisan unanimity and was signed into law.

The Water Security Planning Act repeals and replaces the State's 1987 initial regional water-planning statute. The Commission is “to establish and conduct a regional water-security program” (§ 72-14A-4(A)) and to adopt rules that “at a minimum, establish”

certain procedures for the Act's implementation (§ 72-14A-4(C)). The Act requires a new, science-based, and statewide but regionally driven water planning program to confront hydrologic realities, improve regional water security, and prioritize actions consistent with regional values and determination.

B. Rulemaking Procedural Issues - General

To implement this legislative mandate, ISC staff initiated rulemaking by filing its Proposed Rule on July 17, 2025. Staff's Proposed Rule was unaccompanied by any factual, analytical, or policy documentation to demonstrate how specific provisions satisfy the Act's requirements or present reasons for the staff many consequential decisions. Staff filed only a perfunctory "Statement of Reasons" consisting of circular conclusions with no citation of evidence, no reference to statutory subsections, and no traceable connection to any analytical rationale.

These conclusions are circular because they merely restate the desired outcome: that the Proposed Rule satisfies the Act without any logical bridge between facts, statutory mandates, and regulatory choices.

The filing provides neither the Commission nor the public with the facts and reasoned basis to understand or evaluate the regulatory choices reflected in the Proposed Rule. By withholding the analytical foundation required by law, staff denied the Commission and the public the ability to meaningfully assess whether the Proposed Rule meets statutory mandates or rests upon a rational connection between facts found and choices made. This omission is contrary to both the State Rules Act and controlling precedent requiring reasoned rules supported by evidence.

The absence of any staff-prepared rationale at filing thus impairs meaningful pre-hearing review and heightens the importance of an open, evidence-based process if the final rule is to meet the standard of reasoned rulemaking recognized in *New Energy Economy v. N.M. Public Regulation Comm'n*, 2016-NMSC-005, ¶¶ 22–24 (agency must articulate a rational connection between the facts found and the choices made and disclose the basis of its decision so that it may be understood and judicially reviewed).

C. Procedural Issues - Specific

On August 26, 2025, the Commission published a Notice of Proposed Rulemaking setting a September 27, 2025, deadline for written comments and scheduling a non-evidentiary hearing for October 15–17, 2025. The Notice expressly excluded cross-examination, disallowed sworn testimony, and omitted any process for the submission or review of exhibits, expert analyses, or rebuttal evidence.

Under the Default Rule for Rulemaking Procedures, NMAC 1.24.25.9(B), an agency must conduct rulemaking “in accordance with the State Rules Act and any other applicable law.” Those provisions, including NMSA 1978, §14-4-5.4, require the agency to maintain a rulemaking record that discloses the factual, policy, and legal basis for each adopted rule.

The Commission has both the authority and the responsibility to meet this standard in this rulemaking, where complex hydrologic, legal, and economic sciences are integral to compliance, and where social-science insights must guide equitable policy. To do so, the Commission must structure its hearing to accommodate technical evidence, expert analysis, and rebuttal. Without such evidence, the record will consist only of untested assertions and unsourced conclusions, providing no basis consistent with law for the required explanatory statement under §14-4-5.5 or for a record sufficient to withstand judicial review under §14-4-5.4.

Movant filed written comments on September 27, 2025, identifying procedural and substantive deficiencies and urging the Commission to produce the analytical foundation required by law. Movant emphasizes that regional water-security planning success requires technical, interdisciplinary expertise and informed community-based participation.

The record shows the Water Advocates is the only party to identify the absence of an analytical rationale as a legal defect under the State Rules Act. Staff testimony filed October 1 does not acknowledge this issue. This silence underscores that the Commission has yet to develop the foundation required for reasoned rulemaking.

Movant now submits this Motion in good faith, not to delay but to assist the Commission in ensuring that its rulemaking process complies fully with statutory mandates, the State Rules Act, and applicable case law requiring fair and reasoned decision-making with the hope that the Commission’s promulgated rule will transparently establish the regulatory framework for effective, regional planning that confronts and proposes viable solutions to New Mexico’s twin crises of widespread overuse and diminishing streamflow and groundwater recharge.

III. STANDING AND INTEREST OF MOVANT

Movant participated continuously in statewide and regional water-planning activities since 1998. Movant prepared the 2004 Middle Rio Grande region’s water plan accepted by the Commission for filing. Movant organizes and hosts public forums. Movant has

contributed technical analyses and made recommendations for every phase of New Mexico's water-planning evolution. The organization and its members have repeatedly collaborated with the Interstate Stream Commission, the Office of the State Engineer, the NM Water Planning Dialogue, local governments, and regional planning entities to improve methods for integrating hydrologic science, data transparency, and stakeholder participation in planning. Movant consistently advocates for problem-solving-oriented water-resource planning to produce recommendations designed for implementation and actually carried out, confronting unsustainable use, bringing demand into balance with supply, and protecting water to meet the needs of future generations of New Mexicans.

Movant's members include technical and social-science professionals who apply scientific and civic expertise to develop solutions protecting both present and future generations of New Mexicans. Their collective experience provides a multidisciplinary perspective essential to legal, effective implementation of the Water Security Planning Act.

The Proposed Rule directly affects how participation will occur. Because it determines how regional planning councils will form, operate, and interact with the Commission, it will shape the scope and quality of future public involvement and scientific input, including whether qualified organizations and experts are afforded meaningful opportunity to contribute evidence and analysis.

Movant's participation in the Commission's rulemaking is further supported by § 72-14A-5(B), which requires the "regional water security program" "include broad public input," "consider public welfare values," and "address the needs of future generations." The promulgated rule will either enable or obstruct the ability of qualified organizations, experts, and communities to participate in these processes.

Movant brings extensive professional expertise and member experience in statewide water policy and regional planning processes that can assist the Commission in achieving the Act's objectives. Movant seeks to contribute this expertise constructively so that the Commission's final rule will align with legislative intent, comply with all relevant law, and equip New Mexico's regions to plan responsibly within their available water supplies.

For these reasons, Movant satisfies all requirements for standing as an interested and affected party to this rulemaking proceeding.

IV. LEGAL FRAMEWORK

A. Statutory Mandates

Section 72-14A-4(A) provides that the Interstate Stream Commission “shall establish and conduct a regional water security program” consistent with the provisions of the Act. The statute is mandatory: the Commission must not only establish the program but conduct it in a manner consistent with the Act’s requirements for scientific grounding, expertise, lawful process, and broad public participation.

Under § 72-14A-4(C), the Commission is required to adopt rules to establish and conduct the regional water-security program. Those rules must, at minimum, address the subjects enumerated in § 72-14A-4(C)(1). Additional statutory duties and program outcomes are set forth in § 72-14A-5, and the Commission’s rules must operationalize those provisions.

(1) Commission Rulemaking Responsibilities under § 72-14A-4(C)(1)

Section 72-14A-4(C)(1) of the Water Security Planning Act enumerates the minimum rulemaking responsibilities the Legislature assigns to the Commission. These provisions define the scope of the Commission’s authority and establish mandatory procedures the Commission must follow to legally establish and conduct the regional water-security planning program. The required rule topics are as follows:

1. Define the boundaries and number of water-planning regions in the state.
2. Establish the criteria for Commission approval of a regional water-security plan with prioritized projects, programs, and policies.
3. Establish the procedure for a regional water-planning entity to develop and provide notice to the Commission of issues and concerns relating to the public welfare of the water-planning region.
4. Establish the composition of a regional water-planning entity.
5. Establish the procedure for a regional water-planning entity to consider public-welfare values and the needs of future generations of New Mexicans.

The Proposed Rules don’t include the third and fifth statutory requirement. The promulgated rule must.

(2) Program Duties and Outcomes under § 72-14A-5(B)

Section 72-14A-5(B) defines the substantive duties and outcomes that the statewide regional water-security program must achieve. These requirements express the Legislature’s intent that regional water-security planning not merely produce documents

but accomplish identifiable purposes grounded in science, law, and equity. The program must therefore:

1. Be established through broad public input.
2. Consider public-welfare values, balancing water uses and the needs of future generations of New Mexicans.
3. Be grounded in state water law.
4. Be developed using the best available science.
5. Recognize and respect federally recognized or reserved tribal water rights.
6. Consider access to water for domestic use.
7. Comply with applicable federal water law.

The Proposed Rule doesn't operationalize these statutory requirements through clear, objective criteria and procedures, including measurable standards, so compliance by councils can be verified on the face of the record. The promulgated rule must. Otherwise, "consideration" risks becoming nominal rather than substantive.

(3) Respect Legislative Direction

Section 72-14A-5(C)(1) was added by the House floor amendment. It grants each regional council autonomy to determine its own membership. The Proposed Rule's prescription of membership is in conflict and would exceed the Commission's delegated authority.

Under the whole statute rule, statutory provisions addressing the same subject must be construed together so that each is given effect and none rendered superfluous. The Proposed Rules must therefore harmonize the autonomy granted in Section 72-14A-5(C)(1) with Section 72-14A-4(C)(1)(d), which assigns the Commission the duty to establish the composition of regional councils. By law, the Commission must reconcile these provisions by changing the rule adopted pursuant to Section 72-14A-5(C)(1) to state the Commission's membership criteria that each council must satisfy in exercising its autonomy under Section 72-14A-4(C)(1)(d). Failure to do so would result in an impermissible violation of the Legislature's delegation of responsibility and authority. Commission membership criteria in the final rule must be transparently supported by analysis and reason.

B. Rulemaking Obligations Under the State Rules Act

The State Rules Act, NMSA 1978, §§ 14-4-1-11, establishes mandatory requirements for all agency rulemakings. Among other obligations, agencies must maintain a rulemaking record that discloses the factual, policy, and legal basis for each rule (§14-4-5.4), issue a concise explanatory statement of reasons for and against adoption (§14-4-5.5), and

conform their procedures to applicable law and due-process standards. These provisions ensure that rulemaking is transparent, evidence-based, and capable of judicial review.

C. Style and Drafting Requirements

Mandatory drafting standards under 1.24.10.12 NMAC require clear, positive, present, and precise language, consistent terminology, parallel structure, active voice, and accurate use of “shall” and “may.” Under NMSA 1978, § 14-4-5.3(A)(3), failure to comply with these standards may render a rule invalid.

D. Due-Process Standards

The New Mexico Constitution, Art. II, § 18, guarantees due process. New Mexico courts have held that where resolution of issues depends on technical or scientific expertise, a purely non-evidentiary process cannot satisfy due-process requirements. Because regional water-security planning is inherently technical, multidisciplinary, and socially complex, the rulemaking process must include procedures allowing technical evidence, testimony, and rebuttal opportunity to ensure fairness and compliance with the due-process guarantees recognized in *City of Roswell v. N.M. Water Quality Control Comm’n*, 2012-NMSC-008 ¶ 17.

V. ARGUMENT

The Commission’s Proposed Rule fails to meet statutory and constitutional requirements.

A. Defective Rulemaking Record and Absence of Analytical Rationale

Staff filed its Proposed Rule without any factual or analytical record to explain or justify its provisions. Although NMSA 1978, § 14-4-5.5 requires a statement of reasons only upon adoption of the final rule, the agency must first develop, within the rulemaking record, the factual, policy, and analytical foundation from which that statement can be drawn consistent with the reasoned-decision requirement articulated in *New Energy Economy* and *City of Roswell*. Without such a foundation, neither the Commission nor the public can meaningfully evaluate the Proposed Rule’s underlying staff decisions.

The New Mexico Supreme Court has repeatedly affirmed this requirement. Additionally, § 14-4-5.4 of the State Rules Act requires a record and basis for each proposed rule to ensure that the rulemaking is informed by evidence. Together, §§ 14-4-5.4 and -5.5

NMSA 1978 require a transparent and reasoned connection between the facts found and the choices made. In *City of Roswell v. N.M. Water Quality Control Comm’n*, 2012-NMSC-008 ¶ 17, the Court held that an agency acts arbitrarily and capriciously when it fails to consider an important aspect of the problem or to explain the reasoning that links the evidence to its conclusions. *New Energy Economy v. N.M. Public Regulation Comm’n*, 2016-NMSC-005 ¶ 23, likewise requires agencies to articulate that connection clearly so their decisions can be understood and judicially reviewed.

The materials filed by staff do not meet these standards. The Statement of Reasons consists only of conclusory assertions that the Proposed Rule satisfies the Act, without evidentiary citation, analytical support, or reference to statutory subsections. No accompanying documentation establishes any basis for specific provisions. By filing an incomplete record and designing a non-evidentiary hearing format that precludes interested parties’ testimony, technical exhibits, or rebuttal, staff has denied the Commission essential information.

Because the rulemaking record is already deficient, the Commission cannot fulfill its statutory duty by relying on it as filed. It is incumbent upon the Commission to remedy these defects, permit the submission of technical evidence and analysis, and ensure that the final rule rests on a lawful, evidence-based foundation.

B. Inadequacy of the Non-Evidentiary Process

The Notice of Proposed Rulemaking scheduled a purely non-evidentiary hearing, forbidding sworn testimony, cross-examination, and rebuttal. Because the regional water-security planning program established by the rule must satisfy the mandatory requirements in § 72-14A-5(B)—including use of best-available science, grounding in state water law, and consideration of public-welfare values—meaningful evaluation of the Proposed Rule requires expert testimony, technical exhibits, and an opportunity for rebuttal. New Mexico precedent makes clear that when agency action turns on technical or scientific judgments, due process and the State Rules Act require a record that demonstrates how evidence was weighed and how conclusions were reached. In *City of Roswell v. N.M. Water Quality Control Comm’n*, 2012-NMSC-008 ¶ 17, the Court held that an agency acts arbitrarily and capriciously if it fails to consider an important aspect of the problem or does not disclose the reasoning that connects evidence to the result. As the Supreme Court further explained, “An administrative decision is arbitrary and capricious if it is unreasonable or without consideration and in disregard of the facts and circumstances of the case.” (*City of Albuquerque v. N.M. Water Quality Control Comm’n*, 2010-NMSC-013, ¶ 21 (quoting *Jones v. N.M. State Racing Comm’n*, 1983-NMSC-089, ¶ 6, 100 N.M. 434, 671 P.2d 1145)).

The planning of water supply security is, by its nature, a technical endeavor. It requires integration of hydrologic data, climatologic projections, legal constraints, and socioeconomic information to evaluate regional supply and demand, determine sustainable yield, and balance combined uses with the available supply. As the Supreme Court’s review in *City of Albuquerque* demonstrates, agency decisions involving water resources necessarily rest on the evaluation of expert evidence and scientific method. To characterize such a process as “non-technical” is therefore false. Such characterization disregards the scientific and analytical disciplines essential to reasoned decision-making as required by law. Under the State Rules Act, disregard of applicable case law renders the proceeding arbitrary and capricious because it fails to consider the material facts and circumstances of the case.

A process that excludes evidence, forecloses rebuttal, and relies only on staff’s unsourced assertions cannot meet these legal standards.

Under the State Rules Act, the rulemaking body has discretion to structure its proceedings as necessary to develop a complete and reviewable record. Where the subject matter depends on scientific or technical expertise, fairness requires that the Commission permit the presentation and testing of technical evidence. Failure to exercise that discretion where expertise is material denies due process.

The New Mexico Constitution, Art. II, § 18, guarantees due process. The State Rules Act § 14-4-5.3(B) requires rulemakings to be “in accordance with case law” governing procedural fairness.

C. Substantive Omissions Don’t Meet Statutory Requirement

The Proposed Rule omits the two procedures expressly required by § 72-14A-4(C)(1)(c) and (e): (1) a procedure for a regional water-planning entity to develop and provide notice to the Commission of issues and concerns relating to the public welfare of its region, and (2) a procedure for each entity to consider public-welfare values and the needs of future generations. It also fails to implement the outcomes mandated by § 72-14A-5(B), including broad public input, use of best-available science, and attention to the needs of future generations.

Further, § 72-14A-5(C)(1) grants autonomy to regional councils to determine their own membership. Any rule that prescribes or constrains council membership would conflict with this legislative directive and undermine regional self-determination intended by the Water Security Planning Act.

D. Unclear Authority and Accountability for Guidelines

Section 72-14A-4(C)(2) requires the Commission, through rulemaking, to adopt guidelines that at a minimum address the eight subjects listed in paragraphs (a) through (h). While the statute mandates that guidelines be adopted, it does not define their legal status. It is therefore essential that the rule specify the authority, process, and accountability governing those guidelines, including whether they are binding or advisory; the conditions and procedures for amendment; whether notice or public comment is required for any change; and the extent to which ISC staff, councils, or the Commission may act outside them.

The Proposed Rule is silent on these points. It provides no assurance that guidelines will remain transparent, consistently applied, or subject to Commission approval. Without defining how guidelines acquire authority, how they may be modified, and how the public is to be notified of changes, the rule invites arbitrary discretion and undermines the statutory intent for a stable, participatory framework.

E. Defective Drafting Quality and Certification Requirement

The Proposed Rule does not conform to the mandatory drafting standards set forth in 1.24.10.12 NMAC, which require clear and precise language, consistent terminology, parallel structure, active voice, positive and present language, and accurate use of “shall” and “may.” These standards ensure that adopted regulations are written in proper English.

The Commission must certify under NMSA 1978, § 14-4-5.3(A)(3), that its rule submitted for filing “has been formatted, numbered and styled in accordance with current requirements.” Because the Proposed Rule’s language and structure do not conform to the drafting standards established in NMAC 1.24.10.12, the Commission could not execute a valid certificate of compliance. The Commission must correct all such defects before promulgation to ensure the rule can take effect.

VI. RELIEF REQUESTED

The New Mexico Water Advocates respectfully request that the Interstate Stream Commission:

A. Ensure a Fair, Adequate Hearing Process

1. Convert the October 15–17 hearing to an evidentiary or hybrid format allowing expert testimony and submission of technical exhibits from any qualified, interested party, as due process requires.
2. Grant this Water Advocates’ request to intervene as an interested party in the rulemaking.
3. Provide full access to the facts and analytical materials relied upon in developing the Proposed Rule, consistent with the transparency and completeness requirements of the State Rules Act.
4. Keep the record open following the October 15–17 hearing to receive closing statements or supplemental filings that include rebuttal arguments, clarifications, or revisions developed by a structured, representative advisory committee invited by the Commission to improve the Proposed Rule in light of issues raised during the hearing.

B. Establish a Reasoned, Lawful Record

5. Develop and file a complete analytical rationale supported by facts linking findings to statutory directives, consistent with *New Energy Economy* and *City of Roswell*.
6. Add the procedures mandated by § 72-14A-4(C)(1)(c) and (e) requiring the rule to specify: (1) how a regional water-planning entity will develop and provide notice to the Commission of issues and concerns relating to the public welfare of its region; and (2) how each entity will consider public-welfare values and the needs of future generations.
7. Implement all outcomes in § 72-14A-5(B), including use of best-available science, consideration of public-welfare values, and attention to future generations. Ensure these requirements are measurable and reported.
8. Honor regional council autonomy under § 72-14A-5(C)(1) by deleting prescriptive membership requirements inconsistent with legislative intent.

C. Assure Clear Authority and Drafting Quality

9. Clarify the authority and accountability of guidelines under § 72-14A-4(C)(2) by specifying whether they are binding or advisory, the procedure for their amendment, and the role of Commission approval and public notice.

10. Redraft the Proposed Rule for clarity, consistency, and conformance with drafting standards under 1.24.10 NMAC, ensuring the Commission can certify that under NMSA 1978, § 14-4-5.3(A)(3).

D. Complete the Rule Collaboratively and Transparently

11. At the conclusion of the October hearing, vote to establish a collaborative process similar to that the Commission used to prepare the 1994 *Regional Water Planning Handbook*. Commissioners, staff, and representative stakeholders would work together to rapidly prepare an agreed Revised Proposed Rule with supporting record for Commission consideration and adoption by a deadline. See ISC Exhibit 3, Bates no. 00008, 2nd ¶.

Responding to a request from regional water planners, the Commission appointed a sub-committee of Commissioner Palemon A. Martinez and Commissioner Tracy Seidman Hephner to direct the preparation of a Regional Water Planning Template to guide regional planners to a useful and uniform product. Also, the Commission appointed a volunteer work group to participate in the preparation of the Template and this Hand Book. Cochaired by Commissioners Palemon A. Martinez and Tracy Seidman Hephner, the work group was composed of fourteen individuals from diverse constituencies and regions, all with substantial background in water issues and management. The group was guided by the hands-on experience of the regional water planners and aided by the staffs of both the Commission and the State Engineer Office. Together, they have written this document, the Regional Water Planning Handbook, which has been formally adopted by the Interstate Stream Commission.

12. Adopt procedural accommodations throughout this process that preserve timeliness while ensuring due-process safeguards and a record adequate for review.

These actions will strengthen legality, transparency, and public confidence while maintaining the schedule for rule adoption.

VII. CONCLUSION

The Proposed Rule, as filed by staff, is arbitrary and capricious. Rulemaking requires a transparent and reasoned record demonstrating how facts support conclusions. Because staff has failed to provide that record, it is incumbent upon the Commission to remedy these defects and ensure that the final rule rests on an evidence-based foundation in accordance with law.

To be effective, the reformed planning program must yield implementable programs and policies that provide for water resilience for regions, and thus resilience for New Mexico.

The **Water Security Planning Act** envisions a transformative, science-based process to confront solid information showing what increased water security would require. To realize that vision, the Commission must adopt a rule that satisfies every statutory mandate, including those of the **State Rules Act**.

As filed, the Proposed Rule omits required procedures, lacks analytical foundation, and relies on a non-evidentiary process that cannot produce a record adequate for judicial review. These are legal defects, not policy differences. They can be most timely corrected if the Commission exercises its **State Rules Act** authority to ensure a fair hearing, develop a reasoned record, and complete the promulgated rule through an evidence-based process.

The **New Mexico Water Advocates** submit this Motion in good faith and cooperation, recognizing both the urgency of timely adoption and the necessity of lawful procedure. Movant stands ready to assist the Commission and its staff in developing the analytical, technical, and participatory foundation the Act requires.

By adopting the procedural safeguards and corrective measures set forth in Section VI, the Commission can finalize a rule that:

1. Fully complies with law,
2. Commands public confidence through transparency, and
3. Equips every region to plan responsibly within its available water supply.

Respectfully submitted,

New Mexico Water Advocates

By: /s/

Norm Gaume, P.E. (Ret.)

President, appearing *pro se*

Albuquerque, New Mexico

Dated: October 5, 2025

STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION
IN THE MATTER OF THE PROPOSED RULE TO IMPLEMENT
THE WATER SECURITY PLANNING ACT
Rulemaking No. 25-01(R)

**REPLY OF THE NEW MEXICO WATER ADVOCATES TO THE RESPONSE OF THE
INTERSTATE STREAM COMMISSION**

INTRODUCTION

The Water Advocates submit this Reply to correct the record and address the Interstate Stream Commission staff's October 10 Response to the Water Advocates' October 6 Motion. The extensive Response is largely argumentative and fails to address the statutory issues now before the Commission.

The Response does not rebut the Water Advocates' statutory arguments; instead, it reframes them as commentary to avoid the Commission's responsibility to evaluate their merits. The Water Advocates' Motion sets forth specific legal and factual assertions grounded in statutory text and established principles of administrative law. The staff's Response minimizes those assertions by characterizing them as rhetorical questions and dismissing them as late public comment, thereby avoiding engagement with the statutory and procedural issues raised. The Response represents staff advocacy, not a reasoned determination of the Commission, which has yet to act in its quasi-legislative capacity. The Motion does not seek to convert the rulemaking into an adjudicatory proceeding; it seeks

only a fair rulemaking process designed to create the record to satisfy the State Rules Act and fulfill the Water Security Planning Act's directive that the program be established and conducted based on science, data, and professional judgment. The Commission, not its staff, must exercise this delegated legislative authority by making the determinations of law and fact necessary to justify adoption of the rule.

Under the State Rules Act, substantive filings addressing statutory compliance obligate the agency to respond meaningfully to the issues in the record. (NMSA 1978, § 14-4-5.3 (A-C); 14-4-5.4 (A); *City of Albuquerque v. N.M. State Engineer*, 2010-NMSC-013, ¶ 21; *Duke City Lumber Co. v. N.M. Envtl. Improvement Bd.*, 1984-NMSC-042, ¶ 13). The staff's Response instead reframes the Water Advocates' legal assertions as rhetorical questions and dismisses them without analysis. By substituting argumentative misrepresentations of the Motion for reasoned analysis, the Response obstructs development of a rulemaking record adequate to meet the Commission's increased burden to establish the reasoned rationale for its decisions in the absence of any staff rationale.

This Motion and Reply are submitted in good faith to assist the Commission in fulfilling its statutory responsibilities. They identify and preserve substantive and procedural defects that, if uncorrected, will expose the Commission to judicial review and possible invalidation of the adopted rule under the State Rules Act (NMSA 1978, § 14-4-5.7). The Water Advocates seeks to prevent that outcome by urging the Commission to correct deficiencies now through a transparent, evidence-based process.

The sections that follow address each major misstatement and omission in the Response and clarify the Commission's duties under the governing statutes.

A. THE DEFAULT RULE DOES NOT CONSTRAIN THE COMMISSION

The Response's opening assertion misinterprets the legal effect of the Default Rule and, in doing so, understates the Commission's own discretion and responsibility. The Response claims: "The NMISC has fully complied with the notice and comment requirements of the State Rules Act and the Default Procedural Rule, neither of which require the Commission to structure its hearing to accommodate technical evidence, expert analysis, and rebuttal." That statement misreads both the State Rules Act and the Default Rule.

NMAC 1.24.25 supplies a uniform process where an agency lacks its own promulgated procedures; it is a stand-in, not a ceiling on process. See NMAC 1.24.25.8(B). The Water Security Planning Act imposes more: the Commission must establish and conduct the state's program based on science, data, and professional judgment (NMSA 1978, § 72-14A-4(C)). For a technical rulemaking of this kind, the Commission not only may but should supplement the Default Rule to ensure the rulemaking record contains the factual basis required by the State Rules Act § 14-4-5.4(A) for reasoned rule adoption. As the Supreme Court explained in *City of Albuquerque v. N.M. State Engineer*, 2010-NMSC-013, ¶ 21, an agency exercising quasi-legislative authority must develop a rational basis grounded in substantial evidence; it cannot rely solely on procedural compliance.

B. MISCHARACTERIZATION OF THE MOTION

The Response asserts: “The Motion ignores the fact that the rulemaking record is not yet complete at the time of introduction of the proposed rule.” That is incorrect. The Motion expressly states, “the Commission must adopt procedures now to develop a reasoned record adequate for judicial review,” and “the Proposed Rule omits the explanation, documentation, and rationale necessary to demonstrate how its provisions comply with the Water Security Planning Act.”

The Motion requests “qualified participants be allowed to present testimony, exhibits, and expert analysis to complete the record before adoption.” These are process requests intended to ensure a lawful, reviewable record, not an effort to adjudicate the merits prematurely.

The Response further claims: “The Water Advocates seek to complicate and obfuscate the rulemaking with technical matters that the governing legislation does not require to be determined in the rule.” Those ‘technical matters’ of geohydrology, the arts and sciences of water resources planning, meaningful consideration of future generations, and improved governance are the very subjects the Legislature commanded the Commission to base its program and decisions upon under § 72-14A-4(C). The Motion seeks only the procedures needed to rationally and transparently ground the rule’s content in science, data, and professional judgment, as the Act requires (NMSA 1978, § 72-14A-4(C)). Avoiding these subjects would defeat the statute’s purpose and render the rule unsupported by the very expertise the Act requires.

C. STATUTORY DUE PROCESS REQUIREMENTS

The Motion uses due process in the statutory sense: the Commission must provide a fair opportunity to present evidence and testimony, not merely public comment, so that the rulemaking record will be adequate for review under the State Rules Act sections and case cited in the Introduction. These statutory protections exist precisely to ensure that rulemaking records are sufficiently robust to permit judicial review without remand.

The Response repeatedly invokes constitutional due process (ten mentions, including two headings) and then dismisses a constitutional claim the Motion did not make. The Motion asserts that, in exercising delegated legislative authority, the Commission must observe procedural fairness sufficient to produce a reasoned, reviewable rule. Because the record has yet to be made, the Commission should adopt procedures now to provide this level of statutory due process at the hearing. That requirement—to afford meaningful participation and evidentiary opportunity—carries directly into the question of how the Commission conducts its upcoming hearing.

D. OPPORTUNITY TO PRESENT TESTIMONY AND EVIDENCE

The Response states: “Granting the Water Advocates’ eleventh-hour request to intervene as a party to the rulemaking is not only unnecessary for them to have a voice in this rulemaking, but it would also violate the statutory due process protections of all other interested entities or members of the public.” That claim reverses the logic of procedural fairness.

The Motion expressly requests that any qualified party be permitted to present testimony and exhibits and to participate fully in the rulemaking hearing. The Commission has discretion under NMAC 1.24.25.10(A) to provide additional procedures consistent with law when necessary to develop a complete and reliable record.

At the September 18 Commission meeting (video recording and transcript obtained via a public records request), staff counsel described herself as representing the planning program and argued for limiting public participation to brief unsworn comments; Hearing Officer Orth corrected that view, emphasizing that rulemaking is conducted publicly and that anyone may present witnesses and exhibits. Expanding informed participation strengthens due process; it does not diminish it.

The Commission's July 17 Order, July 17 Motion to Initiate Rulemaking, and August 26 New Mexico Register Notice make no mention of any opportunity to present witnesses or exhibits, limiting participation to brief public comment. On September 18, staff counsel defended the restriction. Hearing Officer Orth overruled, stating anyone may "step up and make public comment on that, put on witnesses and exhibits, what have you." The agency never recorded that clarification for the record. Absent attendance at that meeting, potential witnesses may think such participation is disallowed. This circumstance undermines the fairness of the proceeding. The claim of untimeliness is refuted by the Commission's failure to make the Hearing Officer's clarification official. The Motion seeks to preserve and expand that public access. This omission constitutes a grave staff denial of public due process opportunity. Staff disregarded the Hearing Officer's clear statement of the law and failed to make the change public.

E. FAILURE TO CONSIDER SUBMITTED COMMENTS

The Response asserts: “The NMISC has considered all of the Water Advocates’ comments submitted to date.” That is incorrect. On November 1, 2024, the Water Advocates’ president and past president met with the ISC Director, Deputy Director, and General Counsel to present and discuss detailed written recommendations and proposed rule language.

They commended the submittal’s substantive recommendations, said they were timely, and committed to forwarding a set of recommendations and the Water Advocates’ draft rule to planning-program staff. At a December follow-up meeting, the General Counsel advised that planning-program staff declined to consider the documents. The facts contradict the Response’s assertion.

F. LACK OF RATIONALE RENDERS THE PROPOSED RULE ARBITRARY AND CAPRICIOUS IN ITS CURRENT FORM

The Response repeats that the Motion is premature because the record is not yet complete. That misstates the defect identified. The Proposed Rule, as filed, contains no accompanying explanation or rationale for its substantive provisions. Under the State Rules Act, a rule must rest on a reasoned basis that shows its consistency with law and evidence (NMSA 1978, § 14-4-5.3, 5.4 (A); *New Energy Economy, Inc. v. N.M. Pub. Regulation Comm’n*, 2016-NMSC-005, ¶¶ 17-18). See also *Duke City Lumber Co. v. N.M. Environmental Improvement Bd.*, 1984-NMSC-042, ¶ 13 (agency must articulate the rational connection between facts found and choices made). Absent a documented

rationale, the Proposed Rule's content is arbitrary and capricious on its face because it fails to disclose the reasoning and evidentiary linkage between the rule's provisions and the statutory purposes they purport to advance.

The Water Advocates filed the Motion after the staff published the pre-filed testimony and exhibits of its four expert witnesses. The Water Advocates expected this testimony and exhibits to articulate the missing rationale. They did not. The testimony and exhibits consist largely of policy summaries, administrative description, and irrelevant historical documents, which leave the legal, technical, and evidentiary bases for the Proposed Rule's provisions unexplained. In the absence of a reasoned rationale prepared by staff, the Commission must develop the record to support each provision, or the rule will remain susceptible to judicial review as arbitrary, capricious, or unsupported by substantial evidence. Accordingly, the Commission must take corrective procedural steps to develop this missing rationale during the hearing process itself.

G. THE DEFAULT RULE DOES NOT LIMIT THE COMMISSION'S PROCEDURAL AUTHORITY

The Response's refrain that the Commission has "fully complied" with the State Rules Act and the Default Rule does not address the issue. The Default Rule fills the procedural gap where an agency has not promulgated its own procedures; it does not restrict the Commission from tailoring its process to the demands of a technical rulemaking. See NMAC 1.24.25.8 (B).

The Water Security Planning Act requires the program to be established and conducted based on science, data, and professional judgment (NMSA 1978, § 72-14A-4(C)). A hearing limited to unsworn comment cannot meet that standard. At the September 18 meeting, the Director emphasized that three Brendle Group reports provide an extensive technical basis for the Proposed Rule; they do not. Those reports summarize engagement and process but do not supply hydrologic, engineering, or scientific analysis to support the rule's provisions. A lawful rulemaking cannot rest on administrative summaries in place of a reasoned rationale that links choices to supporting facts. Accordingly, the Commission must take corrective procedural steps to develop this missing rationale during the promulgation process.

H. THE COMMISSION MUST HARMONIZE § 72-14A-4(C)(1)(d) AND § 72-14A-5(C)(1)

Section 72-14A-4(C)(1)(d) directs the Commission to promulgate rules establishing the composition of a regional water planning entity. That authority allows the Commission to define composition standards, such as representational balance and capability, as part of the formation and recognition process.

At a late stage of the Water Security Planning Act's passage, the Legislature unanimously adopted the House floor amendment that added § 72-14A-5(C)(1), which provides that each regional water planning council shall appoint its own members. As the later-enacted and more specific statement on membership, § 72-14A-5(C)(1) must be read in harmony with § 72-14A-4(C)(1)(d) under the whole-statute rule, which requires all parts of a statute to be construed so that none are rendered surplus or contradictory. A council cannot be recognized without members, and those members must be appointed by the

council itself within the composition standards the Commission lawfully establishes. It is the Commission's duty to harmonize these provisions by rule so that council formation and recognition occur coherently and lawfully.

The Proposed Rule fails to do so. It specifies fixed membership slots without any relevant qualifications and without a process by which councils appoint members consistent with § 72-14A-5(C)(1). By treating § 72-14A-4(C)(1)(d) as plenary authority over composition and disregarding § 72-14A-5(C)(1), the Proposed Rule substitutes administrative preference for legislative direction. To comply with the Act, the Commission must define composition standards for recognition such as broad stakeholder representation and competence while providing a process for councils to appoint their members consistent with § 72-14A-5(C)(1). That construction honors both provisions, preserves legislative intent, and avoids reading § 72-14A-5(C)(1) as an implied repeal of § 72-14A-4(C)(1)(d).

CONCLUSION

The Water Advocates' Motion seeks lawful procedures, not delay. It asks the Commission to adopt hearing rules that will enable development of a reasoned, evidence-based record supporting every provision of the adopted rule. The staff's Response misstates both the Motion and the governing law. The Commission retains full authority under the State Rules Act and the Water Security Planning Act to correct these deficiencies now, to ensure an open, technically grounded, and transparent hearing, and to promulgate a rule that satisfies statutory mandates.

By exercising that authority, the Commission will strengthen public trust in its statutory mission and demonstrate that rulemaking on complex scientific and engineering matters can meet both legal and professional standards. The Water Advocates respectfully urge the Commission to proceed accordingly and to adopt a rule that is lawful, reviewable, and commands lasting public confidence.

Respectfully submitted,
NEW MEXICO WATER ADVOCATES

By: _____/s/_____
Norm Gaume, P.E. (ret.)
President, appearing pro se
Dated: October 13, 2025

Norman Gaume, P.E. (ret.)

Albuquerque, New Mexico 87122 • 505 690-7768 • normgaume@gmail.com

Narrative CV

Professional Experience

Water resources, environment, and open government advocate, 2014 to date

New Mexico Water Advocates, a NM non-profit corporation since 1998, President, 2021 to date. nmwateradvocates.org The Water Advocates incorporated in 1998 to prepare the first Middle Rio Grande regional water plan for the Interstate Stream Commission. The Water Advocates' purpose is to be a catalyst that, through work with others, will transform statewide water governance policy enabling New Mexico's successful adaptation to increasing aridity and water scarcity.

Produced Water Treatment and Reuse Rulemaking, 2024. Served as an expert witness for New Energy Economy during the 11-day hearing before the Water Quality Control Commission in its opposition to the New Mexico Environment Department proposed oil produced water treatment and reuse rule. Presented written and oral expert testimony. My client completely prevailed.

New Mexico 2022 Water Policy and Infrastructure Task Force, 2022 to 2024. Co-chair of Water Management and Planning work group, 2022-2023. Drafted Senate Bill 337 (2023), the Water Security Planning Act that passed unanimously. Resignation as a NM Water Ambassador was requested and tendered April 2024.

Adobe Whitewater Club of New Mexico, member 1985 to date, Board member, 2020-2023. Represented the paddling club as Petitioner in litigation before the New Mexico Supreme Court, with a ruling from the bench and SCOTUS (cert. denied) that upheld the constitutional right for recreational access to New Mexico's rivers and streams. 2022-NMSC-020.
<https://www.adobewhitewater.org/stream-access>

Gila Conservation Coalition, pro-bono expert, 2014-2020. Applied open government laws, engineering science and data, and public advocacy to stop the New Mexico Interstate Stream Commission's infeasible water development of the wild Gila River. Endured and prevailed through a SLAPP countersuit by the New Mexico Interstate Stream Commission, with a final partial award of my attorneys' fees as determined by the NM Court of Appeals. After receiving evidence summarized in the document linked below, the ISC ultimately voted to abandon the project after spending approximately \$17 million, including \$500,000 in fees paid to multiple outside counsel, for the ISC's SLAPP countersuit.
https://nmwaterconference.nmwrri.nmsu.edu/2020/assets/Poster/32_Gaume.pdf

Water Resources and Water Utility Consulting Engineer, 2003 - 2014.

Sole practitioner consultant providing professional services related to water resources planning and administration and water utility management to the City of Santa Fe, the Buckman Direct Diversion Board, the New Mexico Attorney General, the New Mexico State Engineer, the New

Mexico Interstate Stream Commission, New Mexico State University, a privately-owned public drinking water system, and outside counsel and professional services contractors for the Albuquerque Bernalillo County Water Utility Authority, the New Mexico State Engineer, and the New Mexico Interstate Stream Commission. The scope of my professional service included project management and project engineering support, consulting expert and expert witness services pertaining to water resources and water utility litigation, data analysis and interpretation, strategic planning, management consulting, staff development, and representation over five years related to project compliance with the National Environmental Protection Act and the Endangered Species Act.

Professional services provided from 2004 through 2011 to the City of Santa Fe and the Buckman Direct Diversion Board to implement the Buckman Direct Diversion Project included serving as interim project manager, performing coordination and tasks over five years of federal environmental law compliance work; drafting government permit applications and language for intergovernmental agreements necessary for the project's implementation, writing procurement documents and negotiating engineering contracts on behalf of the owners, reviewing engineering work and the preliminary design for the design-build contract; evaluating alternatives for electric power service; leading negotiations with the electric utility for service and solar electric system interconnection; addressing public concerns with legacy Los Alamos National Laboratory radioactive contamination in river sediments buried near the location of the Rio Grande diversion location, mitigating public concerns regarding radionuclides in LANL stormwater runoff upstream of the Rio Grande diversion location, procuring and managing CPA services for capital and O&M budget accounting and reporting; procuring and helping to direct public communications services and prepare public communication materials; preparing operations budget requests; preparing the final operations and maintenance staffing plan; and procuring a 1.0 MW solar energy facility that has provided major project operations cost savings at no capital cost to the Buckman Board.

Professional services provided to the NM Attorney General, the NM State Engineer, and the NM Interstate Stream Commission from 2003 to 2011 were related to anticipated Lower Rio Grande litigation and preparation of concepts and the rules for Active Water Resources Administration, which the State Engineer promulgated in 2004 and the NM Supreme Court unanimously upheld in 2012-NMSC-039. Prepared District Specific Rules for multiple river basins.

Director, New Mexico Interstate Stream Commission (NMISC) and Assistant State Engineer, 1997 through 2002. Directed the programs, staff, and budget resources of the New Mexico Interstate Stream Commission. Obtained approval for and deployed major new increases in the professional staff numbers and budget to accomplish urgently needed work. Provided advice and technical support to the New Mexico State Engineer. Developed the concepts of the 2002 Framework for a State Water Plan and provided content as a contributing author. Served as engineer-adviser to New Mexico's Rio Grande Compact Commissioner. Convened and chaired a Lower Pecos River water rights owners' private collaboration that produced a permanent solution to a long-standing problem with Pecos River Compact compliance, as required by a US Supreme Court 1987 decree. Co-authored a new law compiled at §72-1-2.4 NMSA 1978 to codify the Pecos River Compact solution.

Director, Water Resources Division, City of Albuquerque, 1990-1997. Managed the Water Resources Division from its creation in 1992. Led the planning and implementation of a major scientific program of water resources investigations of the groundwater resources of the Albuquerque Basin and the groundwater systems hydrologic connection to the Rio Grande. Led the development of the Albuquerque Water Resources Management Strategy, a comprehensive and sustainable water resources planning solution for Albuquerque, including obtaining formal adoption and implementation funding. Co-managed with a Bernalillo County counterpart, the

development, government adoption, and initial implementation of the 1994 Albuquerque/Bernalillo County Groundwater Protection Policy and Action Plan.

Plant Operations Manager and Technical Services Manager, Water Utility Division, City of Albuquerque, 1986-1990. Managed water production and transmission facilities operations, a major system-wide rehabilitation program of City wells, pumping stations, and storage tanks, and Safe Drinking Water Act compliance. Initiated and implemented new programs for aquifer and water system water quality surveillance and water conservation.

Assistant Division Manager, Capital Projects Engineer, Treatment Plant Manager, and Electrical/Mechanical Maintenance Engineer, Wastewater Utility Division, City of Albuquerque, 1978-1986. Held a series of line management positions with rapidly increasing responsibility. Key member of new management team formed in response to a NM district court determination that old and new City wastewater treatment plants were both public nuisances. Implemented major new wastewater treatment facilities and operations and maintenance staffing and training programs to bring the City of Albuquerque into compliance with the Clean Water Act.

Staff Engineer, Water Resources Engineers, Inc., Austin, Texas, 1974-1978. Applied river, estuary, and reservoir computer hydrodynamic and water quality simulation models to support planning and development of solutions to water resources problems.

EPA Water and Wastewater Graduate Traineeship, 1972-1974. Earned a Master of Science degree in Civil Engineering, water and wastewater. My studies were supported by an EPA traineeship grant under their 1972 Clean Water Act workforce development program. Secondary fields of study were water resources and hydrology, with eight graduate hours in experimental statistics.

Education

Certificate, Basic Management Program, Anderson School of Management, University of New Mexico

Master of Science in Civil Engineering, New Mexico State University

Bachelor of Science in Electrical Engineering, New Mexico State University

Registration and Honors

Retired Professional Engineer, New Mexico License No. 6969

Phi Kappa Phi and Eta Kappa Nu National Honor Societies

Water Pollution Control Federation's William D. Hatfield Award "for outstanding performance in works operations, management and advancement of knowledge in the field of water pollution control."

New Mexico Foundation for Open Government Citizen Dixon Award, 2016.

Fulbright Subject Matter Specialist, University of New Mexico, 2023.

Research Scholar Letter of Academic Title, University of New Mexico, 2023-2026.

Gila Natural Resources Symposium Lifetime Achievement Award, 2024.

STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION
IN THE MATTER OF THE PROPOSED RULE TO IMPLEMENT
THE WATER SECURITY PLANNING ACT
Rulemaking No. 25-01(R)

**EXPERT TESTIMONY OF NORM GAUME, PRESIDENT, ON BEHALF OF THE
NEW MEXICO WATER ADVOCATES**

I. Introduction

My name is Norm Gaume. I am retired licensed water engineer and president of the New Mexico Water Advocates. I submit this written testimony on behalf of the Water Advocates to assist the New Mexico Interstate Stream Commission in adopting a lawful and effective rule that meets the spirit and intent of the Water Security Planning Act and will withstand judicial review. I am the Water Advocates representative for the Commission's rulemaking, acting *pro se*.

This testimony addresses substantive defects in the Proposed Rule and offers constructive remedies. The Water Security Planning Act at § 72-14A-4(A) provides,

“Subject to available funding, the commission shall establish and conduct a regional water security program pursuant to the provisions of the Water Security Planning Act.”

The Water Advocates' goal is a functional, clear rule. We do not seek delay as the ISC staff Response to the Water Advocates Motion asserts. The Commission must ensure its adopted rule requirements produce a **problem-solving regional water security program** that is successful statewide. The rule must require councils and communities to:

- understand the hydrologic realities of their regions,
- identify and prioritize feasible programs and actions to adapt to those realities, and
- inform State and local water resources policy and decision-making through transparent, scientifically grounded, and publicly accountable planning.

The rule also must identify the Commission's required support, oversight and essential approvals in the conduct of this **program**.

All primary participants in the process including the Commission, its staff, regional councils, communities, elected officials, water professionals and leaders, and the public must be able to read the rules and gain a clear understanding of their respective roles, responsibilities, and authorities. Only such a rule can translate the Act's framework into an operational program that improves New Mexico's long-term water security in accordance with law.

The Commission's July 17 and August 26, 2025, docket filings initiated the Commission rulemaking within a non-evidentiary process and schedule specified by the Commission's staff. The Commission's July 17 filing of the Proposed Rule was provided by staff without any analysis of alternatives or rationale for the decisions that make the Proposed Rule what it is. As detailed in the Water Advocates October 6 Motion, the Proposed Rule lacks the analytical reasoning the State Rules Act's explicit reference (NMSA 1978 § 14-4-5.3(B)) to case law requires (*New Energy Economy v. NMED*, 2016-NMSC-005 ¶ 18: agency must show a *reasoned analysis* and *rational connection* between facts and decisions; *ABCWUA v. NM PRC*, 2010-NMSC-013 ¶ 21 decisions must rest on *substantial evidence* credible in light of the whole record).

Without any record of the reasons for staff decisions, the Proposed Rule as submitted by staff is arbitrary and capricious. The Commission has the authority to modify its rulemaking procedures and take the time necessary to create an adopted rule founded on a transparent, reasoned rationale as the legally sufficient backbone of this critically important statewide program.

This testimony builds upon and incorporates by reference three filings already docketed in this proceeding:

- Water Advocates' Public Comment (filed September 27, 2025)
- Water Advocates' Motion (filed October 6, 2025)
- Water Advocates' Reply (filed October 13, 2025)

Together, these documents provide the detailed statutory and procedural analysis that supports this testimony.

The purpose of this testimony is not to restate those filings but to interpret their implications in practical terms, to connect their analysis with the Commission's decision now before you, and to demonstrate how specific, feasible revisions can align the rule with both the Water Security Planning Act and the State Rules Act.

This testimony focuses on the practical implications of the record. It explains how the Commission can remedy the rule's deficiencies to comply with statutory mandates and uphold due-process and transparency requirements. By doing so, the Commission can establish a lawful, durable regional water-security framework that earns public confidence and fulfills the Director's goal of sufficiency for decades.

II. Expert Qualifications

I am qualified by education, licensure, and experience to present this expert testimony to the Commission. I hold a Bachelor of Science in Electrical Engineering and a Master of Science in Civil Engineering from New Mexico State University. I am a retired licensed professional engineer (New Mexico License No. 6969) with more than thirty years of experience in water-resources engineering, management, and policy within New Mexico. My professional work has focused on developing and implementing transparent, science-based, and lawful water-management strategies at municipal, state, and regional scales. Since 2021, I have served as president of the New Mexico Water Advocates, a nonprofit incorporated in 1998 to advance sustainable water governance and planning throughout the state.

The following four professional experiences illustrate how I have applied problem solving methods to resolve complex water-management challenges. Each example offers lessons directly relevant to the Commission's current rulemaking under the Water Security Planning Act, demonstrating that durable water governance depends on credible data, reasoned analysis, and accountable public engagement.

1. Albuquerque Water Resources Management Strategy (1990–1997)

As the City of Albuquerque's Water Resources Manager from 1990 to 1997, I managed a program that demonstrated the poor performance and long-term consequences of continuing the status quo of sole reliance on local groundwater pumping and created a solution that was adopted and implemented. After state and federal geologic survey agencies produced initial evidence, we emphasized a parallel public communications and involvement program that was publicly visible, transparent, inclusive, and accessible. The evolving multi-disciplinary effort and expertise transformed powerful economic-development and political disbelief that an Albuquerque water-supply problem existed into a publicly understood and accepted solution that my successors implemented. My work concluded with the Albuquerque City Council's adoption of the 1997 Albuquerque

Water Resources Management Strategy along with seven annual rate increases to fund it. This is a classic example of the engineering profession's scientific problem-solving methods applied to a public water resources security challenge.

2. Pecos River Compact Compliance Settlement (1997–2002)

As Director of the Interstate Stream Commission from 1997 to 2002, the State Engineer's principal assignment to me was to find a solution to New Mexico's chronic annual problem to comply with the direct requirement of the U.S. Supreme Court's 1987 Pecos River Compact Amended Decree to never again owe water to Texas. Compliance was an annual emergency requiring full-time staff attention. Powerful opposing institutions, including the Bureau of Reclamation, took intransigent positions. When an Amended Decree violation became imminent in late 2000, the Commission's direct intervention through its forceful presence and Chairman was persuasive. The required delivery of water through the last dam in New Mexico was made. I then chaired an invited stakeholder group's 2001 meetings, traveling to Cell weekly for six months with the Commission's expert staff engineer and other expert individuals skilled in reaching a collaborative agreement. A detailed settlement was agreed, motivated by the end-of-year deadline for developing authorizing legislation. The detailed solution was signed into law in 2002 after passage by the Legislature with bipartisan sponsors from Roswell and Carlsbad. My successors implemented it. The results speak for themselves, including compact-compliance success and lessons learned.

3. State Engineer Administrative Authority Rulemaking (2003–2004)

As a self-employed consulting engineer specializing in water resources management and planning, I worked in 2003 and 2004 as the engineering subcontractor to a State Engineer's expert private-sector attorney to jointly develop the legal and technical principles for a rule authorized by NMSA 1978 § 72-2-9.1. The rule gives detailed meaning to that law, which articulates New Mexico's imperative to comply with interstate stream compacts and the State Engineer's authority to administer water diversions based on the best information available. After the attorney and I completed the integrated legal and technical conceptualization of the needed rule, a State Engineer technical expert and staff lawyer joined us to write the rule through numerous drafts and then negotiate its internal approval. The State Engineer promulgated the rule in 2004. It was upheld in 2012 by the New Mexico Supreme Court's unanimously supportive opinion, 2012-NMSC-039.

4. Gila River Diversion Opposition (2014–2020)

In 2014, I closed my successful sole-proprietor consulting engineering practice to focus on stopping the Interstate Stream Commission's opaque, wasteful, and intentionally deceptive effort to build the Gila River Diversion Project. The project was fatally flawed on its face for engineering and water availability reasons, as I asserted publicly in 2014. It would have destroyed a nationally significant wild river segment I have studied and know well. The segment flows through national forest and through state lands purchased and held in the public trust for their unique ecological significance. The project footprint would have destroyed this wild ecological treasure, long protected by state conservation expenditures.

After six years of focused opposition, including forensic reviews of ISC and Bureau of Reclamation models, I submitted a signed engineering analysis to the Commission demonstrating that the agencies' project reports, data, and model outputs were intentionally biased, and that Reclamation's draft Environmental Impact Statement materially misrepresented those already biased analyses. Upon receipt of my analysis, this Commission abandoned its predecessor's efforts in 2020. The Commission spent \$17 million in public funds to produce nothing of public value. This experience is precisely why the Water Security Planning Act requires the Commission "shall ensure" "scientific integrity in accordance with the principles of honesty, objectivity, transparency, and professionalism."

Conclusion

Across these four experiences I learned that New Mexico's water security depends on professional credibility and honesty utilizing transparent data, reasoned grounding, and accountable public process. These lessons provide my professional foundation for presenting this testimony and recommendations for the Commission's consideration in promulgating the water security program rule that the Water Security Planning Act requires.

My narrative CV is filed separately to demonstrate my qualifications to testify at this hearing as an expert witness.

III. Framework for a Functional Rule

Nothing in the Proposed Rule provides the information an interested party needs to understand the regional water security planning program that § 72-14A-4(A) requires the Commission to establish and conduct. The Commission must articulate a coherent

framework explaining how the Commission, regional councils, and communities are to fulfill their statutory responsibilities under the Water Security Planning Act. Without such a structure, the rule cannot be functional or reviewable. The following framework—based on § 72-14A-4(A)—describes the integrated system the Commission’s rule must establish.

A. Objective

The objective of this rule is to establish the Commission’s requirements for New Mexico’s regional water security program, as provided in § 72-14A-4(A), NMSA 1978. The rule empowers the nine geographical regions illustrated in Exhibit I to organize, plan, and act collectively to improve regional and statewide water security. Its purpose is to ensure that water planning functions as a problem-solving process grounded in science, data, and public participation.

B. Organization of Regional Water Security Planning Councils

The rule authorizes and directs the organization of nine regional water security planning councils corresponding to the regions shown in Exhibit I. It establishes requirements for the Commission to organize and convene councils and for councils, if they choose, to organize and convene themselves.

Representative groups within a region may apply to the Commission to receive funds to establish a council if the Commission determines the proposal would be helpful to the regional council’s creation. Once a council is established and approved by the Commission, it may apply for additional funding to develop a detailed work plan.

C. Work Plan Development and Commission Support

Following any needed negotiation and upon Commission approval of the work plan, the council applies to the Commission to receive the best available data, expert services, grants, and staff assistance to implement the approved plan. Councils and the Commission work cooperatively to ensure that each plan is based on the best available science, data, and models describing regional water supply, use, and trends.

D. Council Responsibilities and Planning Process

Councils shall emphasize public communications and transparency. Councils shall transparently develop, document, and publicly report their work and progress; draft plan sections for public review and comment; obtain public review of the complete draft plan; submit the complete draft plan to the Commission; respond fully to review comments; and obtain Commission approval of the completed regional water security plan.

Each council shall provide opportunities for meaningful participation by credentialed experts, the public, local communities, and the Nations, Pueblos, and Tribes within its region. Councils shall acknowledge and respect tribal sovereignty, water rights, settlements, and water needs, and document how their work advances the public welfare and the needs of future generations of New Mexicans.

E. Plan Content and Outcomes

Each completed regional plan shall document the region's prioritization of policies, projects, and programs to improve water security. Plans shall demonstrate how the region's planning responds to the hydrologic realities of the region and to statewide objectives and constraints. Councils shall take full cognizance of those realities and produce vetted, prioritized, and implementable regional water security plans that define and document their consideration of the public welfare and the needs of future generations.

F. Implementation, Tracking, and Updating

With Commission assistance, councils secure funding, implement their plan, and keep it current. They track and publicly report implementation progress, including progress toward achieving the mandatory planning outcomes specified in § 72-14A-5(B) and (C).

IV. Summary and Rebuttal of Legal and Procedural Deficiencies

All procedural and legal concerns are set forth in the Water Advocates' Motion and Reply, incorporated by reference. Together they establish that the Commission's current process and staff-drafted rule fail to meet the standards of the State Rules Act and controlling New Mexico precedent.

Key Findings (Summary of Motion and Reply):

1. **Neglect to include mandatory procedures.**
2. **Lack of reasoned analysis** (*New Energy Economy v. NMED*, 2016-NMSC-005 ¶ 18).
3. **Failure to define delegation and oversight** (§ 72-14A-4(A)–(C)).
4. **Mischaracterization of the Motion** as mere public comment.
5. **Denial of due process** through a non-evidentiary hearing for a technical rulemaking on the highly technical endeavor that is water resources planning. The hearing structure precludes intervening party status and cross examination.

These defects remain unrebutted. A rule adopted without correction would be arbitrary and capricious and would violate NMSA 1978 § 14-4-5.7(B). It would not withstand judicial review.

V. Substantive Deficiencies of the Proposed Rule

The following eight deficiencies demonstrate that the Proposed Rule fails to implement the Water Security Planning Act (§ 72-14A NMSA 1978) as enacted.

- A. Absence of a Reasoned Framework and Failure to Explain Staff Decisions
- B. Misrepresentation of the Engagement Record and Omission of Public-Welfare Requirements
- C. Excessive Staff Centralization and Undefined Commission Oversight Responsibilities
- D. Lack of Substantive Approval Criteria and Performance Standards
- E. Failure to Operationalize Commission and Council Responsibilities and Over-Specification of Administrative Detail
- F. Failure to Incorporate Communities in the Proposed Rule Concepts
- G. Local and Polycentric Governance
- H. Undefined Accountability for Guidelines

A. Absence of a Reasoned Framework and Failure to Explain Staff Decisions

It is not evident that staff followed any framework or rationale in drafting the Proposed Rule. The text repeats certain statutory provisions verbatim while ignoring others, including the Legislature's express requirements for scientific integrity, grounding, and measurable outcomes. Where the rule adds language, it merely names duties without describing how they are to be performed. Dozens of lines within the Proposed Rule recite responsibilities without defining their execution or accountability. Only three of the five statutory elements that require rulemaking appear at all, and none is operationalized.

No written explanation, technical memorandum, or administrative record shows how and why staff decided what to include or exclude. The absence of an articulated rationale hinders the Commission's evaluation of whether the rule meets legislative intent. Given the Water Security Planning Act's direction to the Commission to establish a functional, science-based program to improve New Mexico's water security, a minimal, unexplained rulemaking effort cannot satisfy the Commission's statutory duty to "establish and conduct" the statewide program (§ 72-14A-4(A)).

B. Misrepresentation of the Engagement Record and Omission of Public-Welfare Requirements

Staff cite the Brendle Group Engagement Report (2024) as justification for major elements of the Proposed Rule, but that reliance is unfounded. That report, the third in a series of three, documents outreach activities and summarizes participant responses. It does not analyze statutory requirements, recommend rule language, or supply an evidentiary basis for policy choices. Staff's claim that the report supports their drafting decisions is inconsistent with its content.

The Engagement Report records broad participant support for a transparent, scientifically grounded, and regionally representative planning process. Respondents emphasized that councils' members should be elected or transparently selected to include members with professional water experience rather than relying solely on personal experience. Two-thirds of respondents indicated that technical expertise is more important than general representation. These preferences are absent from the Proposed Rule. Staff has offered no rationale for omitting them.

The report also shows that participants viewed public welfare and the water needs of future generations of New Mexicans as core, measurable elements of regional planning. In questions 21 and 22, respondents defined public welfare broadly to encompass environmental health, community well-being, cultural and traditional values, and protecting water for future generations. Participants urged that councils document how their plans advance or affect those values. They further recommended that the Commission adopt clear criteria and indicators for evaluating public welfare impacts.

The Proposed Rule ignores those findings. It provides no definition of "consideration," no requirement for analytical evaluation of public welfare impacts, and no procedure to measure progress. Without such direction, the duty "to consider public welfare values, balancing water uses and the needs of future generations" (§ 72-14A-5(B)(2)) becomes symbolic. Meaningful consideration would require that councils determine, using the best available science, data, and models, the consequences of maintaining the status quo and to identify policies that would materially improve water-supply resilience, advance public welfare, and preserve water for future use. The Water Security Planning Act does not require such policies be adopted, but the rule must require they be examined and understood. The Commission must correct this omission to comply with both the statute and the record of public input.

C. Excessive Staff Centralization and Undefined Commission Oversight Responsibilities

The Act assigns the Interstate Stream Commission authority and responsibility to establish and conduct the state's water-security planning program (§ 72-14A-4(A)). The Commission expects its Director to manage its staff and operations under its direction and within the limited expenditure authority delegated each year. The Proposed Rule blurs that structure by embedding numerous layers of internal staff "approval" and "concurrence" that extend beyond ordinary administrative management. The Proposed Rule provides no criteria for these staff decisions. Conditioning nearly every regional action on prior staff approval or permission subordinates regional initiative to internal control, undermining the councils' statutory role and weakening Commission oversight.

The Commission's June 2025 meeting illustrates this problem. At that meeting, the Commission approved the annual work plan for the ISC's water planning program. When a Commissioner asked about the staff's intended staggered, tiered approach to limit active planning to three regions at a time for two-year cycles, the planning program manager admitted that staff had not analyzed any alternatives. From my direct contemporaneous participation, planning program staff had predetermined that approach as workload triage before public engagement began. Although the Commission approved the work plan, it required quarterly progress reports as a condition of approval. No report has been presented in any public meeting or posted to the Commission's agenda as of October 2025.

The staff work plan allocates \$5 million to unnamed on-call contractors and no funding to help regional councils organize, convene, and begin their work. The Water Advocates' June 16 public comment objected to that allocation. Such budgeting exemplifies how staff has consolidated authority and resources, disregarding both the Act's delegation of responsibility to regional councils and the Commission's specific June 2025 direction.

The rule must clarify oversight responsibilities, require regular reporting of staff actions in open meetings, and ensure that staff function to support and facilitate all regional planning work. The Commission must not allow its staff to be regional planning gatekeepers and for its rule's processes and procedures to institutionalize staff-centric bottlenecks.

D. Lack of Substantive Approval Criteria and Performance Standards

The Act requires the Commission to approve regional water-security plans that reflect public welfare values, future generation needs, and the best available science, data, and models (§ 72-14A-5(C)(1)). The Proposed Rule reduces that substantive duty to a

procedural checklist that restates statutory topics, such as stakeholder engagement, documentation, and prioritization, without establishing standards for adequacy, scientific integrity, or consistency. Plans could satisfy the consideration requirement through a trivial effort. The Commission's rule must require Councils demonstrate analytical rigor and alignment with hydrologic reality to make the mandatory consideration meaningful.

New Mexico's prior planning rounds show the consequence of such shallow review. The Commission previously "accepted for filing" plans produced in earlier cycles without any independent evaluation or requirements for improvement in accordance in the absence of defined standards. As a result, legislators and the Legislative Finance Committee's leadership concluded that state-funded regional water planning yielded only "shelf reports" lacking any independent value. The Water Security Planning Act was enacted to correct that failure by requiring active review, revision, and the Commission's approval and endorsement for funding the prioritized projects, programs and policies set forth in implementable plans.

The rule must require explicit Commission findings of adequacy before approval, confirming that each regional plan demonstrates: (1) evidence-based analysis of available water supplies, uses, and trends; (2) documented and meaningful consideration of public welfare and intergenerational needs; (3) internal consistency and prioritization of projects, programs, and policies; and (4) technical review by qualified ISC engineers and hydrologists to ensure hydrologic soundness.

Furthermore, the rule neither provides nor requires measurable performance standards to evaluate implementation and improvement over time. Without indicators, periodic evaluation, and public reporting, neither councils nor the Commission can demonstrate progress or accountability, including to the Legislature and its appropriators. To comply with legislative intent, the rule must couple substantive approval criteria with performance metrics that make success measurable and reviewable.

E. Failure to Operationalize Commission and Council Responsibilities and Over-Specification of Administrative Detail

The Water Security Planning Act establishes a shared operational framework between the Commission and the regional councils. The Commission must maintain and provide data and models, coordinate among agencies, and support the regions (§ 72-14A-4(C)(3)–(9)) while requiring analytical rigor. Councils must prepare and update plans that prioritize clearly described projects, programs, and policies; consider public welfare values and the needs of future generations; and document water-supply conditions and trends (§ 72-14A-

5(B)–(C)). These interdependent duties are designed to function together so that regional analysis informs state and local governments’ decision-making. The Commission, in turn, provides the technical foundation for credible regional water security planning and ensures its quality.

The Proposed Rule recites these responsibilities in general terms but omits the procedures, schedules, and standards needed to make them work. For councils, it imposes no requirement to set measurable objectives, evaluate alternative strategies, or demonstrate progress toward improved water security. For the Commission, it provides no mechanism for maintaining or publishing the data and models that councils must rely upon, nor for delivering coordinated technical assistance. At the same time, the Proposed Rule devotes numerous lines of text to name internal duties without criteria or the required procedures and any performance requirements, rendering the Proposed Rule bureaucratic and functionally silent.

By over-specifying bureaucratic form while omitting operational content and procedures, the Proposed Rule perpetuates the formalism that hampered earlier planning efforts. To implement the Act faithfully, the rule must simplify internal provisions and eliminate excessive staff “approval” requirements. The rule must clearly state outcome-based requirements focused on scientific credibility, transparent evaluation, and measurable improvement in regional water security.

F. Failure to Incorporate Communities in the Proposed Rule Concepts

The Rule gives scant attention to communities and subregions. The word community appears only once in the entire document, limited to a narrow membership category for regional Councils. This omission reveals a deeper flaw: the Rule treats planning regions as the unit of organization, as though water security issues exist only at that scale. In fact, planning regions are administrative conveniences and clearinghouses for recommendations. With the notable exception of regions that are interstate stream compact compliance basins, regions are not the places where water problems are felt or solved. The Rule must recognize community and subregional scales.

Community-centered planning is essential. Water problems begin and end in communities, towns, villages, irrigation districts, domestic well neighborhoods, acequia associations, and Pueblos, each with unique vulnerabilities, knowledge, and priorities. Effective planning must start with community-level challenges and solutions and then reconcile them across hydrologic subregions and the encompassing regions. Without this

bottom-up integration, regional plans risk becoming abstractions detached from lived reality.

California's Sustainable Groundwater Management Act (SGMA) implementation success that national water expert Dr. Maurice Hall highlighted in the Water Advocates' July 2025 workshop illustrates the effectiveness of empowering local users. Under the SGMA, users of discrete aquifers form local management agencies to balance their basins, subject to state oversight. The Proposed Rule should recognize each non-recharging or inadequately recharging aquifer as a subregion requiring its own groundwater management plan, reviewed by the region for inclusion in the regional plan. This approach would align with decades of research showing that common-pool resources can be protected not only by regulation but also by giving resource users authority to manage for their common good, a solution proven effective in both theory and practice.

G. Local and Polycentric Governance.

The Proposed Rule fails to create a pathway for regional water governance that could eventually share authority and responsibility with the State. New Mexico's history demonstrates that the State alone cannot ensure water security. The Act's intent to base planning on science, inclusion, accountability and public welfare calls for a polycentric model in which local, regional, state, tribal, and community entities coordinate and agree to share responsibility.

Polycentric water governance, as developed in Elinor Ostrom's Nobel Prize-winning research and advanced through Indiana University's Ostrom Workshop, means managing shared water resources through many overlapping centers of authority. Each center- local, regional, state, tribal, or community-holds partial responsibility, coordinates with the others, and contributes to resilient, adaptive management of our common water resources.

The Proposed Rule could advance this concept by requiring Councils to examine how local governments' land-use authorities can be exercised as part of long-term policies to achieve the rule's objective to "help to ensure water security into the future." Land use and water use are inseparable. A water security planning framework that ignores local land-use authorities outside the State's purview is incomplete.

H. Undefined Accountability for Guidelines

The Proposed Rule fails to define accountability for the development, approval, amendment, and application of Guidelines. Guidelines are generally understood to be an

institution's formal administrative instructions to Staff that the institution can adopt and amend through a simpler process than rulemaking. As a former Interstate Stream Commission Director and Assistant State Engineer, I know State Engineer guidelines historically served as an internal substitute for rules or supervisory case-by-case direction, sometimes applied as binding policy and other times disregarded at Staff discretion.

The Proposed Rule omits any clarification of who approves guidelines, who has authority to amend them, and who may act outside their parameters. Without these, the Rule creates uncertainty about whether guidelines will be enforceable, subject to Commission oversight, or open to arbitrary Staff interpretation.

This omission undermines both due process and public transparency. When internal guidance substitutes for rulemaking without clear accountability, affected entities cannot know which standards apply, how they may be changed, or by whom. The Rule should therefore establish explicit provisions for guideline authority, including approval and revisions by the Commission, public notice of adoption or amendment, and a prohibition or clear limits on Staff discretion to act outside guideline parameters. The Commission must establish the guidelines policy parameters in the Rule.

I. Summary of Proposed Rule Defects

Taken together, these eight substantive deficiencies reveal a Proposed Rule that is incomplete, opaque, and contrary to the purposes of the Water Security Planning Act. The rule lacks a reasoned analytical foundation, fails to incorporate the Act's mandatory procedures, and centralizes decision-making within staff without defined oversight or measurable standards. It fails to recognize the essential need for community-level and subregional participation, provides no framework that might support future state and local cooperative polycentric governance, and leaves the development and use of guidelines unaccountable. As a result, the rule cannot deliver the transparent, science-based, and community-driven program the Legislature mandated. The Commission must correct these defects by revising the rule to (1) operationalize statutory duties and oversight, (2) embed community and regional initiative as the foundation of planning, and (3) ensure that all guidance, data, and decisions remain subject to Commission approval and public accountability. Only such a rule can achieve durable, lawful, and credible water-security planning for New Mexico.

VI. Conclusions and Requests

The Water Security Planning Act entrusted the Interstate Stream Commission with creating a transparent and durable framework for regional water-security planning grounded in science, data, and public accountability. The Proposed Rule, as written, does not meet that charge. My testimony, together with the Water Advocates' Public Comment (September 27, 2025), Motion (October 6, 2025), and Reply (October 13, 2025), identifies the procedural and substantive corrections required to bring the rule into compliance with statute and to make it effective in practice.

Accordingly, I respectfully request that the Commission:

1. **Revise the Proposed Rule** to bring it into full compliance with the Water Security Planning Act, related statutes, and applicable case law, ensuring that both Commission and regional responsibilities are operationalized as the Legislature intended;
2. **Ensure that regional councils** are empowered to organize and operate in accordance with § 72-14A-5 NMSA 1978, supported and facilitated by Commission resources, technical assistance, and transparent oversight;
3. **Clarify and document all delegations of authority** to staff in writing, consistent with the Commission's organic responsibility; and
4. **Keep the rulemaking record open** and allow timely closing statements and submission of revised exhibits reflecting the testimony and evidence received at this hearing.

Through these actions, the Commission can correct the deficiencies identified in this proceeding and adopt a lawful, transparent, and durable rule that fulfills the Legislature's intent and earns the confidence of the public it serves.

Respectfully submitted,
New Mexico Water Advocates

_____/s/____

By: Norm Gaume, P.E. (ret.)
President, appearing *pro se*
Signed: October 14, 2025