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NM Interstate Stream Commission

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,

Movant.

NOTICE OF FILING OF CERTIFIED TRANSCRIPT FOR RULEMAKING HEARING ON OCTOBER 15, 16 AND 17, 2025

The Water Planning Program ("Program") of the New Mexico Interstate Commission hereby submits the attached Certified Transcript, Volumes I, II and III, from the Rulemaking Hearing held on October 15, 16 and 17, 2025.

DATED this 5th day of November, 2025.

Respectfully submitted,

New Mexico Interstate Stream Commission,
Water Planning Program

By: _____

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STATE OF NEW MEXICO

INTERSTATE STREAM COMMISSION

IN THE MATTER OF PROPOSED NEW RULE 19.25.16 NMAC - Regional Water Security Planning, New Mexico Interstate Stream Commission Water Planning Program.	NMISC NO.: 25-01(R)

BEFORE THE HONORABLE FELICIA L. ORTH

WEDNESDAY, OCTOBER 15, 2025

9:00 A.M.

EVIDENTIARY HEARING VOLUME I

CERTIFIED TRANSCRIPT

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INFORMATION REQUESTED BY Commission

Page Line

Santa Fe, New Mexico
October 15, 2025
8:59 a.m.

HEARING OFFICER ORTH: We're going to begin this morning. Good morning. My name is Felicia Orth, Hearing Officer appointed by the Interstate Stream Commission to conduct a hearing in the proposed adoption of the Regional Water Security Planning new Rule.

The Petitioner is the Water Planning Program of the Commission. The new Rule will be set out or codified in Section 19.25.16 of the New Mexico Administrative Code.

The hearing will be conducted under the State Rules Act, and also the default Procedural Rules for Rulemaking set out in Section 1.24.25 of the code.

This will be a hybrid hearing, meaning we will be conducting it inside the room, and there will also be

full participation by those online.

The hearing will occur over the course of 3 days, today, tomorrow afternoon, and Friday, or at least Friday morning.

A decision on the Rule might be made at the end of the hearing; I think more likely it will be made in a subsequent meeting. The chair will lead the Commission through that discussion when we close the record.

The hearing is being recorded on the Zoom platform, and also recorded and transcribed by David Lee from Cumbre Court Reporting.

We're going to begin the presentations in just a moment with the Water Planning Program Petitioners. There will be many, many Comment opportunities to offer Comment as well. We'll specifically be inviting Comment 2 times; today at noon and at 4:00, at 1:00 and at 4:00 p.m. tomorrow, and on Friday morning at least between 9:00 and 10:00. You can offer that Comment

either in this room or on the platform.

If you are in the room please sign the sign-in sheet. If you're on the platform, please raise your hand, your virtual hand at the appropriate time, or reach out to Jennifer Salazar.

If you have a request to present on a particular day or a particular time, please identify that; we've had several folks do that already, and we will do our best to honor your request.

You can also submit Written Comment up until at least Friday morning at 10:00 a.m.

Just a few words about the procedures we're following here:

You may have engaged in hearings before the WQCC, the Water Quality Control Commission, or the Environmental Improvement Board. I know all of you are astute; you will notice some differences here.

The Rules of the other bodies

require that I swear everyone in under oath. The parties are designated; lots of Cross-Examination going on by folks. This rather rigid delineation between Technical and non-Technical Comment. None of those things are set out in the Rulemaking rules that apply to this hearing.

Commissioners, do you have questions, at this point, around kind of the general format of this hearing?

I will pay attention to the time and take a break around every 90 minutes when there is a good stopping point, just a short comfort break. Again, we won't go much past 5:00 today regardless.

Questions about the process?

No.

All right. I believe in addition to the Commissioners you see arrayed here on the stage, I believe we have Commissioner Suina on the platform.

Let's see.

All right. In that case, then, Ms. Becker, if you would, please.

MS. BECKER: Thank you. May I please ask that roll call be taken before we begin?

HEARING OFFICER ORTH: Yes, thank you.

MS. SALAZAR: Good morning.

Chairman Sanchez.

CHAIRMAN SANCHEZ: Here.

MS. SALAZAR: Vice Chair Timmons.

VICE CHAIR TIMMONS: Yes, here.

MS. SALAZAR: Secretary Anderson.

SECRETARY ANDERSON: Here.

MS. SALAZAR: Commissioner Carrasco.

COMMISSIONER CARRASCO: Here.

MS. SALAZAR: Commissioner Chavez.

COMMISSIONER CHAVEZ: Present.

MS. SALAZAR: Commissioner García.

COMMISSIONER GARCÍA: Present.

MS. SALAZAR: Commissioner Russell.

COMMISSIONER RUSSELL: Here.

MS. SALAZAR: Is Commissioner

Suina online?

COMMISSIONER SUINA: Yes, I'm here.

MS. SALAZAR: Thank you.

Commissioner Balok is not in attendance, I believe, today.

HEARING OFFICER ORTH: Thank you.

Ms. Becker.

MS. BECKER: Thank you. We have a quorum.

Good morning. May it please the Commission:

I am Katherine Becker and I'm here on behalf of the New Mexico Interstate Stream Commission Water Planning Program. I represent them in this matter of a Rulemaking pursuant to the Water Security Planning Act. I want to begin with a procedural matter:

I will be making some brief remarks, and then I will be proceeding with the Testimony with the witnesses. I'll begin with Andrew Erdmann and continue with Sara Fox. I request that all questions of the Commission wait

until the 2 of them have testified, and then I'll present them as a panel.

After that, I understand Public Comment will be interspersed, but when allowed to resume I will present the Testimony of Mr. Chakeres and Director Riseley-White.

I wanted to make certain I will ask them not to be released after they have given their Testimony; rather I'll ask them to attend the bulk of the hearing such that they can be made available to you most likely on Friday morning, so that any questions that arise that come through either Public Comment or the scope of your own thoughts and questions can be asked of them at that time.

My role and my goal is to briefly outline what you have been asked to review and rely upon, and then verbally walk you through the Proposed Rule from the perspective of the witnesses to be able to give their reasons, explain the robust engagement,

and offer the bases for this.

On October 1st, I did file Written Direct Testimony for each of the 4 witnesses. Included with that were 29 exhibits that were referenced in the Testimony. And all of the Public Comments during the duration of the Public Comment period.

A hard copy of all of those pleadings and exhibits and Comments will be available to you either in the mail or hand delivery. I trust that you had 2 weeks to look at that and are somewhat familiar with it as we proceed today.

(NMISC Exhibit 28 Was Received in Evidence.)

MS. BECKER: I do want to note that I had a substitution that I filed on October 9th, so Exhibit 28 has been replaced. Furthermore, some Comments did come in after the Public Comment period closed and through yesterday, 4:30 p.m., we did file those so that you have those Comments that came in

after the Public Comment period closed, either as a feature of mailing or just continued interest.

Today I'll be highlighting the Testimony for you by asking questions of the witnesses. It's going to flow more in a Q&A format, and ideally I'll focus on nuggets of information that is useful and relevant to you in your decision-making.

HEARING OFFICER ORTH: Please, Ms. Becker, slow down.

Actually, that's just a general request of everyone. When humans read, they tend to speed up.

MS. BECKER: Keep in mind that my client eagerly wants to share with you how much of a public process it is from the beginning, and how to think and rethink about Regional Planning.

The Staff will tell you about how they went from Legislation to a Discussion Draft to a Proposed Rule, how they took and integrated questions/ Comments along the way, and really

thought about processes, outcomes, and what information was needed.

The question for you is did the NMISC Staff adequately ensure that the architecture is in place for Regional Water Planning Councils to convene, have the means to examine the "best available science...," and gain an understanding and education collectively to decide on multiple priorities that they recommend for funding. I ask that you be open-minded while we imagine Regional Water Planning Councils.

You will hear from 4 witnesses as to why this current approach builds on prior efforts and is the most beneficial to implementation. Your approval of the Proposed Rule, and later the plans that are submitted by Regional Councils will aid in the development of ideas from the ground up, and advance infrastructure in New Mexico as we continue to live in a hotter and dryer climate.

We know that you're on this Commission for a reason, and we ask that you look at the record and listen to the witnesses and allow them to wow you, listen to all the Public Comments, and ask questions that you think support reasons for adopting the Proposed Rule. Thank you.

With that, I'm asking Andrew Erdmann to come to the podium.

HEARING OFFICER ORTH: Thank you.

I will ask, Ms. Becker, just for the transcript, that every Commenter spell their name very first thing.

MS. BECKER: Excellent; we'll begin that way.

PARRY ANDREW ERDMANN,

after having been first called, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BECKER:

Q. Mr. Erdmann, will you state your

name and spell it for the record.

A. Of course:

My name is Andrew Erdmann. It's A-N-D-R-E-W, and the last name is E-R-D-M-A-N-N.

Q. Let's begin with your qualifications:

(NMISC Exhibit 1 was received in evidence.)

Q. BY MS. BECKER: Is your Resumé contained in Exhibit 1.

A. Yes.

Q. And does it accurately reflect your education and work experience?

A. Yes, it does.

Q. And did you file Testimony for the Proposed Rule?

A. Yes, I did.

Q. And do you affirm your Written Testimony today?

A. I do.

Q. Sometimes it's best to go back a step before we go forward to understand the context of the Proposed Rule.

Would you please tell the

Commission a little bit about the history of Regional Planning in New Mexico.

A. Of course:

The Regional Water Planning in New Mexico really began in 1987. That was when the first Regional Water Plan under the Water Planning Act of 1987, the Regional Water Planning Act, was passed. That kicked off a Regional Planning that took almost 20 years to complete.

The last one of those plans was the Taos plan that was filed in 2008, and that round of Regional Planning was particularly bottom up; right? It was really a process of kind of working directly with Regions. One of the challenges of the resulting plans was that it wasn't really kind of a holistic picture of the whole State, but really specific Regions kind of looking out for their own from there.

Q. If I follow you, you said it started in '87, but the Taos plan was

submitted in 2008. Did I get that right?

A. That's correct.

Q. Why did it take so long?

A. The Taos plan in particular took a long time in part because it tackled complicated issues around Public Welfare. By and large the planning process in that instance did take quite a bit of time. There were no existing plans to build on. The primary goal of the 1987 Statute was to protect New Mexico's water from claims from Texas, which was very successful in achieving that.

But it's challenging to begin something from scratch, so that's why.

Q. Did you include the 1987 Regional Water Planning Act in your Testimony?

A. I did; that's Exhibit 2.

(NMISC Exhibit 2 was received in evidence.)

Q. BY MS. BECKER: Okay. And what did you say that the focus of that Act was on?

A. Well, so there was a Handbook developed in conjunction with that Act, the 1994 Water Planning Handbook, that laid out a strategy, so it looked at how much water was available for a Region, the Region's future water demand, and essentially posed the question of how the Region intends to meet demand with supply.

That was a process that was largely left up to the Regions to figure out how to determine, and the State Engineer, or the Interstate Stream Commission and the State Engineer's Office provided assistance, but it was really a locally driven process.

Q. And so you're referencing the 1994 Regional Water Planning Handbook. Is that correct?

A. That's correct.

(NMISC Exhibit 3 was received in evidence.)

Q. BY MS. BECKER: As Exhibit 3.

A. As Exhibit 3.

Q. And that was prepared by ISC to aid the Regions with their planning efforts?

A. It was, yes.

Q. And so then in your Testimony you identify that there was another effort in 2013. Would you talk a little bit about that?

A. Of course, yeah:

There was a second round of Regional Water Planning that was initiated in 2013. This was more of a top-down approach that included an additional Handbook to the 2013 Handbook, which is also included as an exhibit, Exhibit 4.

(NMISC Exhibit 4 was received in evidence.)

MR. ERDMANN: The real difference between the 2013 and the previous Handbook was that the 2013, as opposed to the '94, included a common technical approach to be used and identified an administrative water supply to sort of establish a consistent

methodology for the Regions across the State to address that kind of holistic quality I mentioned relative to the first round.

Q. BY MS. BECKER: So before we arrived today, what is the last action that this Commission would have had in front of them, whether it be a Handbook, the law, or a plan? What would they have last had in front of them?

A. The last time that this Commission would have been involved other than the passage for WSPA itself would have been the conclusion of the plans that were initiated in 2014, which would have come before this Commission in 2016 and '17.

Q. Okay. And you referenced "WSPA," and if we do that throughout the hearing, I believe you're referencing the Water Security Planning Act.

A. Yes, thank you.

Q. Sure. So we may use WSPA or Act interchangeably, and that's the Act of

2023. Is that right?
A. That's correct.
Q. And was that also in your Testimony?
A. It is, and I jumped a little bit ahead; I'm so sorry.
Q. That's okay.
(NMISC Exhibit 5 was received in evidence.)
Q. BY MS. BECKER: Is that Exhibit 5?
A. It is Exhibit 5, yes. Exhibit 5.
Q. Great. Were you involved in the passage or planning of that Act?
A. I was, yes.
Q. Okay. Please tell the Commission how?
A. So that Act was developed in 2023 on the way into that Legislative session. And I was at the time the only Staff person on the planning program and worked with a group of water experts who were concerned about getting this drafted, to do a number of drafts and eventually to present it at

Committee as the Agency Bill.

Q. Why does the Water Security Planning Act not have the word "regional" in it?

A. In 2023 there was another Bill passing through that was about regionalization of water systems. There was concern that that was going to be confusing to keep track of these two bills with the same. So the emphasis really, as it would have been anyway, but the word "security" was selected because the emphasis really is about ensuring a resilient and secure water supply moving forward.

Q. How does a Regional Council plan for water security or insecurity?

A. Well let's see. How does the Regional Planning Council plan for this?

So water security, I think, really is about having kind of a secure source of water to make sure that there is a continued access to water for people in the Region. The purpose or

the way that the Region can kind of plan to ensure this is to look at ensuring that there is a balance between how much water is being used and how much water is available in that Region.

That's one of the reasons that a regional approach is particularly appropriate for trying to tackle planning projects at this scale because it's something that would be really challenging to do as a single individual entity. So trying to look at the larger amount of water out there and available to use, and balancing that with how much is actually being put to use.

Q. It may sound like I'm jumping ahead, but the Act refers to PPPs. Would you describe what they are?

A. Of course:

The acronym "PPP" stands for "Projects, Programs, and Policies." This is a term of art that came about in that previous round of Regional

Plans that I mentioned in 2016 and '17, and also present in the 2018 State Water Plan.

It's one of the big goals of this project, is to essentially take locally identified Projects, Programs, and Policies and have a strategy to move them from good ideas to effective and implemented projects.

Q. How does the Proposed Rule refer to PPPs?

A. Well, it refers to developing a prioritized list of these PPPs. And one of the real critical differences being sought from this round or this Act and these Rules by comparison of the previous rounds of Regional Planning is that that PPP list be prioritized so that there is a shared sense of what those priorities are from a Region when they put forward a plan.

This is one of the reasons I mentioned it is important to try and strive for that balance at a regional level and identifying plans that do

that.

Q. In your Testimony you identified that from the first planning act in '87, through 2013, to today, the PPPs changed in three ways. You just identified prioritization. Can you highlight what the other two are?

A. Of course; give me just a moment here to make sure I've got my notes here:

One is about prioritization. That's one of the big changes.

Another piece is that the Proposed Rules have the PPPs organized based on Readiness. The intention here isn't that they be prioritized based on Readiness internally, but that we would be identifying projects really early in the process of kind of becoming ready for the middle of that process and towards the end so that we are both moving projects towards completion and relatively quick implementation, but also taking ideas that are going to take some time to move through the

process and kind of bringing those along, and developing them from the point of being ideas to the point of being kind of fleshed out to being really ready for implementation.

Q. And would you, just so that we continue to make sure we're talking about the same thing, just give an example of what a Policy is, a sample Policy, a sample Project, and a sample Procedure?

A. Sure. So a Policy, for example, might be a Policy to tie conservation within a water system to growth, for example, so looking at a way to kind of relate water conservation and new construction.

A Program might be something like, well, a Stormwater Program to try to look at capturing Stormwater in a way to try and reduce some of the difficulties with managing Stormwater on an urban level.

And Project is the easiest one; right? This is something that

you actually build; right? So a new tank for freshwater or drinking water;

A new well;

Diversion or maintenance on existing structures; or,

Asset management planning and that sort of thing.

Q. Thanks.

Let's continue with the relevant history to the Act and what conditions led to renewed Regional Planning:

How would you describe the landscape prior to the passage of the Water Security Planning Act?

A. Well I would say there was a great deal of interest in trying to address water problems around the State. This would have been in 2021, '22, '23. There was a lot of interest in seeing things happen, so there were a lot of projects ongoing at the same time. There was work underway on the Governor's 50-year Water Action Plan. There was updates to the State Water

Plan that was completed in 2023.

When Mike Hammond became the State Engineer, he convened a group that was a Water Policy and Infrastructure Task Force. They were working on a Report that they initially released that calls for additional Regional Planning.

And there was work -- well, I believe the head report was being developed as part of the 50-year water planning, but the Leap Ahead Report, which also has the -- excuse me for looking up the longer name:

"Climate Change in New Mexico Over the Next 50 Years - Impacts on Water Resources."

That was also an opportunity that Report provides projections for anticipated changes to water availability, but also thinks about soil health, fire frequency, seasonality of flow, so there was also a science basis to justify new work, and there was a whole convergence of

projects.
Q. Great. Let's just make sure we touch on each of those:
Did you mention the 5-Year Review?
A. The 2023 update to the State Water Plan, yes.
(NMISC Exhibit 6 was received in evidence.)
Q. BY MS. BECKER: Okay. I believe that's in your Testimony as Exhibit 6. Is that correct?
A. That is correct.
Q. Okay. And then the climate change report, was that commissioned by the New Mexico Interstate Stream Commission?
A. It was.
Q. And who did that work?
A. It was done by a group of scientists led by some of you folks at New Mexico Tech.
Q. Great.
When we refer to that Climate Change Report, that is most commonly

called the "Leap Ahead Report." Is that right?

A. That's correct.

Q. All right. And is that in your Testimony?

A. It is.

(NMISC Exhibit 7 was received in evidence.)

Q. BY MS. BECKER: And is that Exhibit 7?

A. It is.

Q. Okay. I just want to make sure that we highlight that all of these were happening around the same time.

Furthermore, you identified the Water Policy Infrastructure Task Force. What was the charge or goal of that task force?

A. Well the task force was a group of experts, some of them here in the room today, who were looking at strategizing for how to tackle some of the challenges and managing water in New Mexico in conjunction with sort of the momentum around having Mike Hammond

as the interim State Engineer. That resulted in a report called:

"Facing New Mexico's 21st Century Water Challenges," which is Exhibit 8.

(NMISC Exhibit 8 was received in evidence.)

MR. ERDMANN: It includes a specific recommendation about Planning Recommendation 2.2, which mentions:

"... elevating water planning through statutory clarification of its purpose and funding of its work, and through empowerment of regional and local water agencies."

Q. BY MS. BECKER: Great.

When you mentioned the 5-Year Review as the 2023, that was a statewide effort, not a Regional Planning effort. Is that right?

A. That's correct, yeah. In addition to the Regional Water Planning work that the ISC Water Planning

Program is responsible for, there is another separate Statute that calls for State Water Planning, which we're also responsible for.

Q. What is some of the relevant information that is used from the 5-Year Water Report from a State perspective as it relates to a regional perspective?

A. So the State Water Plan was initiated in 2003, and so has been developed during a period when we've been doing Regional Water Planning and has been used in a couple of different ways during that period to capture information from Regional Water Planning.

The 2023 update in particular looks at the data from the Leap Ahead Report that we've discussed, and identifies priorities based on sort of a side-by-side consideration of those conditions and the statutory requirements in the State Water Planning Act.

Q. In your Testimony you also identified how it's helpful to look at Water Use by Categories. Is that included in the 5-Year Report?

A. Yeah, thank you.

The Water Use by Categories report is developed every -- there is a report developed for every, like, 5-year increment from the Office of the State Engineer. And one of the things that the State Water Plan does is basically become updated relative to the new information that's out from the successive Water Use By Categories Report.

We have included the most recent Water Use By Categories Report as an exhibit; excuse me for not having the number right in front of me.

(NMISC Exhibit 17 was received in evidence.)

Q. BY MS. BECKER: That's okay; I believe it's Exhibit 17.

A. Thank you very much.

Q. Double-check me.

A. That's correct.
Q. Okay.
What are these categories of water use, and how are they helpful to the discussion of Regional Planning?
A. Okay. So I am trying to decide if I need to look back at my exhibit here.
Q. You're welcome to do so.
A. Thank you.
Okay. Let me make sure I have the terms right here. The categories are:
Public water supply;
Self-supply domestic. This is water that's in people's homes around the State;
Irrigated agriculture;
Self-supplied livestock;
Self-supplied commercial; and,
Industrial and mining and powertrains.
This is a water source that belongs to members using it. The reason that's distinguished is to

differentiate the self-supplied users from people who are customers of the water system who also do industrial or commercial applications.

The final category is Reservoir evaporation.

Q. Thank you, so you've described what they are. Tell the Commission how they can be useful in Regional Planning.

A. Well, this is one of the ways. This is half of the formula that can be part of looking to develop a secure water supply. This is the portion of this that looks at how water gets used, and this data provides insight into the sort of mix of the water uses at different scales around the State. That can be useful for considering how to balance the use with the available water because it's sort of half of that formula.

Q. If the Commission were to look at Exhibit 17, and then look at the Leap Ahead Report, what would the projection be or what do we know is forecast?

A. The Leap Ahead Report projects that we're going to have roughly 5% less water over the decade in the coming decades with the total reduction.

It's a 50-year period that the Leap Ahead Report considers, so that is a 25% reduction over that 50-year period.

Q. Why is this not Doomsday?

A. Because 50 years is a long time, and we have a lot of opportunity to develop some solutions for this and strategize about how to be prepared for this. I think that's one of the reasons to do this kind of planning, so we can see some of these things coming and know where we stand and make some deliberate decisions about how to move forward.

Q. Is the Water Security Planning Act directly responsive to:

The 50-year Water Plan;

The Leap Ahead Report;

The task force; and,

The recommendations and the 5-year review?

A. It is. It is mentioned in all of those documents and attempting to achieve what they call on it to do.

Q. I believe we haven't yet made certain that the 50-year Water Action Plan is in your Testimony. Is that Exhibit 10?

(NMISC Exhibit 10 was received in evidence.)

MR. ERDMANN: Yes, it is, Exhibit 10.

Q. BY MS. BECKER: Okay. In summary, it sounds like, if I followed your Testimony correctly, there were 2 rounds of Regional Planning beginning in '87. While there were efforts to do the 5-Year Review as recently as 2023, there was a swell of activity that gave rise to:

The passage of the Water Security Planning Act;

The Governor's 50-year Water Action Plan;

The Office of the State Engineer's Water and Infrastructure Policy task force; and,

The Leap Ahead Report.

All of that was in 2022 and 2023. Is that right?

A. That's correct. The 50-year Water Plan was completed in '24, but well underway during that period.

Q. And then you've got next the Tribal water report. How does that fit in?

A. Yeah, so during the development of the 50-year Water Plan, the Planning Program and ISC was really working to coordinate with the Tribes, Pueblos, and Nations around the State.

We hired a contractor from the Planning Program to conduct some outreach work and try and get some input, and we started working with the group that was known as the Tribal Water Working Group, sometimes called the TWIG, and they worked to develop a set of recommendations that were part

of the 50-year Water Plan that were supported by that group that were developed independent of the Agency in the sense that some of those recommendations may or may not be something that the Agency picks apart, but it was captured in the Tribal Water Report, and an opportunity for that group to report out on the shared values on what they wanted to see from State water management.

Q. What contractor did the New Mexico Interstate Stream Commission hire to assist in that effort?

A. Her name is Laurie Weahkee, and she still works with us and has been extremely helpful.

Q. After the Water Security Planning Act was passed in 2023, what immediate steps did you take to implement the Act?

A. So the 2 things we did right off the bat were to initiate the creation of what's the mainstream campaign, which is primarily a website, but is a

campaign about Regional Water Planning and still out there and connecting with a whole lot of people around New Mexico to provide input and get resources to those folks.

As called for in the Act, we also contacted and coordinated with the Indian Affairs Department to develop an ongoing strategy for coordinating with Tribes, Pueblos, and Nations around the State. That group has since become named and is the Water Security Tribal Advisory Council.

Q. Did the Act require that there be an Advisory Council made up of Tribes, Nations, and Pueblos?

A. It does, yes.

(NMISC Exhibit 11 was received in evidence.)

Q. BY MS. BECKER: And was the Tribal Water Report in your Testimony, was that Exhibit 11?

A. It is.

Q. Okay. Thank you.

I believe you referred to 2

actions. The first one was more of a media campaign. Did I get that right?

A. Yeah, a media campaign and a website with a bunch of educational material such that there was a focused place for people to go to learn about water management and this planning process we are taking care of.

Q. What is that called?

A. It's mainstreamnm.org.

Q. And why "Main Stream"?

A. Well the goal was to make discussions of water part of the mainstream of what people are discussing around the State. A lot of our hope with this campaign was that, as I mentioned, we're facing this kind of escalating shortage of water. And that's going to require escalating complexity of solutions to address it, so we're really working to provide education and materials for people to understand things about how water works so that we can continue that process.

(NMISC Exhibit 18 was received

in evidence.)
Q. BY MS. BECKER: Would you please turn to Exhibit 18 with me.
HEARING OFFICER ORTH: Thank you.
Ms. Becker and Mr. Erdmann, we have a note from the folks on the platform that it's a little hard to hear you.
MR. ERDMANN: Okay. Okay. I will try and stay very still by the microphone.
Q. BY MS. BECKER: Looking at Exhibit 18, is that what you include in your Testimony was the magazine in 2025?
A. That is Main Stream Magazine.
Q. Is that Commissioner Suina on the cover?
A. Indeed, it is.
Q. Great. Do you expect any more of these?
A. We do. We're hoping to develop another magazine for this coming spring.
The magazine is a collection of blogs that are interviews that we

have been conducting with water leaders around the State, many of whom are Commissioners, some of whom are here today.

But we do intend to do another issue for next year.

Q. Okay. Let's go back to that other first:

You said in the couple of steps that you started with upon implementation of the Act, you brought in a Consultant to begin work on the Advisory Council now referred to as "WSTAC." Is that right?

A. That's correct.

Q. And how did that get formulated?

A. As I mentioned, we initially contacted the Indian Affairs Department to strategize about how to coordinate this. We sent out -- the Agency and leadership, and our Agency, sent out letters inviting participation from leadership or folks identified by leadership at Tribes, Pueblos, and Nations around the State.

We started by working with an Ad-Hoc Committee, so for the initial component of this we really didn't know that everyone knew about it. It was a brand new thing that sort of the people who show up at the beginning, and that group of people didn't want to claim to represent everyone in the entire State. That was what was known as the Ad-Hoc Committee, and they worked to form the way the whole Council is currently working.

We've since moved on to sort of formalizing that whole Council and had several meetings.

Q. What is the purpose of WSTAC?

If you need to refer to the Proposed Rule, you certainly can.

A. No, I have the language here; I just want to make sure I have everything right while I'm standing.

The Act calls specifically for development, and calls for specifically the Commission to establish a procedure in consultation with New Mexico Indian

Affairs Department to establish an Advisory Council for taking into account in the Regional Water Security Program:

Tribal Sovereignty;

Tribal Water Rights; and,

The water needs of Tribal communities.

Q. Would you look, Mr. Erdmann, at Section 8 of the Proposed Rule:

Just to be clear, is the Proposed Rule in your Testimony as an Exhibit?

A. Yes, it is Exhibit 5.

(NMISC Exhibit 16 was received in evidence.)

Q. BY MS. BECKER: No, I'm looking at the Proposed Rule, which would be Exhibit 16.

A. Sorry; I'm getting lost on my spreadsheet here.

Q. That's okay.

A. That's correct, 16.

Q. Section 8, is that the actual section in the Rule that deals with

the Water Security Tribal Advisory Council?

A. It is, yes.

Q. If you look at Paragraph B, is that where the purpose is spelled out?

A. It is, so:

"Providing a forum for input for the Nations, Pueblos, and Tribes."

Q. And where did the language of this section, to the extent it is not mimicking the Act, come from?

A. This language was developed with input from the Tribal Advisory Council.

Q. Okay.

A. So we worked during the Ad Hoc period and also during the initial component of the full Council to develop language for them to be called out in the Rule and to establish their own Operating Principles and have their existence sort of identified here with some clear parameters.

Q. Great. We'll get more into the Testimony of the Discussion Draft and

the walkthrough of the Proposed Rule with Ms. Fox, but I wanted to highlight that WSTAC was involved and did provide Comments on the Discussion Draft. Is that right?

A. That's correct. The Discussion Draft and also earlier in the process at a couple of touch points.

(NMISC Exhibit 12 was received in evidence.)

Q. BY MS. BECKER: Okay. Did they provide Comments that are included in your Testimony as Exhibit 12.

A. They did and they are included as Exhibit 12.

Q. Okay. Were those Comments integrated into the Proposed Rule?

A. Yes, many of them or most of them.

We worked very hard to try to incorporate the Comments we got from WSTAC and from everyone that we heard from around the State.

Q. Specifically were there Comments that WSTAC made regarding the Proposed

Rule that the New Mexico Interstate Stream Commission did not accept?

A. There were a couple of specific things that were not accepted. Most visibly in relationship to the boundaries on the map, one of the specific recommendations from WSTAC, and it was repeated by other Commenters was the suggestion to create a whole separate Region for the Rio San José area, which includes Laguna and Acoma, and some surrounding communities as well in that area.

That particular change was not made to the Regional boundaries. A significant amount of work was done to develop a section of the Proposed Rule that enables the creation of subregions. The hope and the intention behind doing that was to provide a lot of the benefits that might have been available for breaking that into a separate Region while keeping intact the benefits of having a larger Region.

Q. And your Testimony identifies

that there was an additional category of Comments that were not integrated, but that may be for Mr. Chakeres to address. Is that right?

A. That's correct.

Q. And why is that?

A. There are some Comments around Public Welfare, which is the subject of his Testimony.

(NMISC Exhibit 13 was received in evidence.)

Q. BY MS. BECKER: Okay. If you will look with me at Exhibit 13, would you please describe that.

A. Yeah. Exhibit 13 is a letter from the Interstate Stream Commission Director in response to the Comments received from the Water Security Tribal Advisory Council.

Q. Okay. And so there was a follow-up communication with WSTAC regarding their Comments. Is that the purpose of that exhibit?

A. Yes.

Q. Okay. I'm going to turn to

different exhibits. Is there anything more that you wanted to say?

A. No, that's...

Q. Okay. Well then let's turn to the New Mexico Acequias.

What outreach or inclusion is required for Acequias in the Act?

A. So there is a specific mention of working with the Acequias in the Act. It does not call for the creation of a Council in the same manner that the Tribal Advisory Council is developed, but it does specifically call for coordination with Acequias.

Q. When did you begin coordinating with Acequias on behalf of the Interstate Stream Commission Water Planning Program?

A. Well, we reached out to the Acequias during the development of the 50-year Water Action Plan to have an opportunity to develop what's known as the Acequias Community Water Report, which is Exhibit Number 14.

(NMISC Exhibit 14 was received

in evidence.)

MR. ERDMANN: Many irrigators and Acequia users found time to help us with that, which was particularly remarkable given the timing, shortly after a whole series of large fires, for which we're greatly appreciative.

And so we worked to develop the Acequia Community Water Report, and we have continued to be in touch with the Acequia -- well, we have continued to strive to be in touch with the Acequia Association and Commission and have gone to some of their events, and they have supported us in particular with the Open House that we held in Las Vegas, but in general, kept working with them closely.

Q. BY MS. BECKER: Did you look at or rely upon Exhibit 14 in some of the development for the Proposed Rule?

A. We did, yes.

Q. Why is that?

A. (No audible response.)

Q. How was that helpful to Regional

Planning?

A. Well Acequias are one of the most senior water users in the entire State. Having an understanding of how to best work with Acequias is something that is helpful for us at a State level, where we have a couple of programs already existing.

It is also something that we really are trying to figure out how to ensure it becomes permanently part of Regional Water Planning as we move forward.

The insights that are provided from the Acequia Association and Commission and numerous other individuals and groups associated with that has been incredibly helpful for understanding that and trying to build it in.

Q. Okay. So after that first wave of outreach, it looks like -- again, much of this will be in Ms. Fox's Testimony, but it sounds like you did come up with a Discussion Draft and

Guideline. Is that right?
A. That's correct, yes.
(NMISC Exhibit 15 was received in evidence.)
Q. BY MS. BECKER: That's Exhibit 15 in your Testimony.
A. Yes, it is.
Q. Okay.
We identified that 16 is the Proposed Rule, but in your Testimony you identified the next steps in the Regional Water Security Planning process once this Rule is effective. What do you understand that to be?
A. Well we want to get to the next steps and start with Regional Water Planning in earnest and working with communities and Regions around the State.
In the service of doing that we have been at work already in developing some Tools and Templates and Products and Plans that we're helping to use to kind of help all of these Regions hit the ground running

as we get started.

Q. Let's talk a little bit about that, and let's sort of categorically identify what you mean by "... Tools and Templates..."

A. Sure.

On the Tools and Templates the intention here is not to make decisions on behalf of regional entities, but to give them a set of options to figure out things like how they would like to do governance or decision-making as a large body. That's challenging, and a lot of these Regional Planning groups will be large bodies of people.

It also provides input on specific technical areas in terms of trying to figure out how to not just run the group and do that, but also have to consider certain technical aspects of water, so looking at things like the Water Use By Categories Report. There is a specific...

I can tell when I'm doing

better with the mic; sorry.

There is a specific Project called the Atlas of Plans, which is designed to be responsive to part of the Statute that calls for Regional Planning Councils to work with all of the existing planning work that's happened in a given place.

The purpose of the Atlas Plan is to identify and summarize that work so that it can be used. We're continuing to develop these, so a lot of these have been developed based on conversations with folks who participated in water planning efforts at other times or in other places, and identifying tools that they found were beneficial so that we can develop a vision.

Q. Okay. So following along with your Testimony, it looks like on pages 9 and 10 is where you're describing these "... Tools and Templates..." Is that right?

A. That's correct.

Q. Okay.

I'm just going to call to your attention, categorically you talked about aiding them with having material and the "best available science...." one of them is the Water Planning Mapping Dashboard. Can you describe that one a little more?

A. Of course, yeah:

The Water Planning Mapping Dashboard provides kind of baseline hydrological and demographic data statewide. It helps Councils get a pretty accurate sense and characterize the Region in terms of what they are working for to tackle that balance that we were describing, or that I was describing earlier.

It has a couple of Story Maps that highlight different types of water use around the State, but primarily tries to highlight water use around the State.

I have a couple others.

Q. Let me pause you there for just

a minute; I want to make sure I follow:

Is the Water Planning Mapping Dashboard, is that built on water data that you referenced in Exhibit 17.

A. Yes, thank you, it is. It uses the data from Water Use By Categories Report, which is Exhibit 17.

Q. And is the data able to be made into map layers?

A. It is. The data is at a County level at this point, but you can look at the data aggregated at the County level.

Q. And you briefly mentioned the Small Public Water System's decision. Just so we get a better description of what's in your Testimony?

A. Of course, no, I'm happy to discuss it thoroughly:

All it needs is a snappier title, but the purpose of the Small Public Water System's Decision Support Tool is to help folks who are representing small water systems within the Regional Planning process to

identify potential PPPs, or a Project, Program, or Policy that might be advantageous to them, or perhaps the most advantageous to help advocate for that during the prioritization process.

The Tool asks a series of questions, and then identifies potential projects that can be used, or sort of master list from which it is drawing is the very large PPP list that was consolidated subsequent to the 2016 and '17 round of Regional Planning.

Q. I believe in your Testimony you describe that in order to create these tools, you needed to use Groundwater fact sheets from New Mexico Tech; and, two, the aquifer mapping from the New Mexico Bureau of Geology and Mineral Resources. Is that right?

A. Those are 2 additional projects that are also underway. We are working, and the water data initiative is really leading all of that work, but it is going to also be really beneficial when

it comes time to do Regional Water Planning.

Some of the delineation work that was already in place played a role in identifying some of the boundaries for the proposed Regional boundaries.

Q. And the Atlas of Plans, I believe you touched on this, but that builds on existing plans such that all the Regional Councils will have that information coming into the planning process. Is that right?

A. That's exactly right. So it's a map that includes the relevant plans for a given area, and then it will summarize what one needs to know from those plans.

One of the challenging things that you hear as a planner is that plans just sit on the shelf, so this is us really trying to get recommendations of past plans and all the hard work that's been done previously by people all over the State in front of the people who are the deciders when it comes time to

develop Regional Water Security Plans.

Q. And you did earlier mention Main Stream as a magazine, but as a campaign. What is the campaign part of it?

A. Yeah, the campaign, it is kind of multifaceted and involved:

Initially the purpose of the campaign and the reason it was created was to make people aware of the opportunity to provide input on a series of questions that have grown into this Proposed Rule and the subsequent Guidelines.

It provides some education to make sure that people feel comfortable participating in the process such that we are providing some good background information.

The website has since continued to grow. As I mentioned there was a lot of work underway in 2021, 2022, and 2023. It's become like a resource center that includes the reports that were developed from all

of those activities, and has developed some subsequent educational materials that we developed and posted on there.

We are hoping to kind of continue to use the website as we collect input to move forward but use as a resource for people to learn more about water in the State.

Q. Why is it so important that these resources be created now?

A. Well, Regional Water Planning is going to be an ongoing process. We're anticipating that there is going to be kind of a 2-step process here moving forward with Regional Planning, and that will remain part of the State's water management strategy for many years to come.

The previous Bill was in place for -- wow, since 1987, which is longer than I care to admit, but for several decades, so we are trying to get education, information, and people in the State involved such that we have thousands of people, or at least

hundreds of people.

If you hear from someone who works in water, and I'm sure this is true for many of our Commissioners, people around the State are really concerned. We have a lot of thoughts and want to be helpful in relationship to how we manage the water and plan for it and protect it.

We are using Main Stream as a way to try and expand the educational information that's available to those people and give them opportunities to participate.

Q. Do you consider these living documents?

A. Absolutely.

Q. Will there be additional Tools or Templates referenced in the Guidelines?

A. Yes, there will be. We will continue to develop Tools and Templates. We have a small team and we are trying to come up with good ideas, but there are going to be lots of good ideas that

we don't come up with, but we're going to be responsive to those when other people bring them forward.

Q. Your Testimony also identifies the role of the 50-year Water Action Plan to require additional educational components. Can you describe that?

A. Of course:

The 50-year Water Action Plan that was completed by the Governor's Office, one of its real priorities...

I mean you can tell from the number it's the sort of A1 mandate; right? Right at the top of the process is this mandate to do more education about water at a couple different levels in New Mexico. We are looking at:

Workforce;

Looking at a K-12 Program; and,

General outreach along with educational materials.

A lot of the work that we've been doing aligns really nicely in

particular with that broad outreach, and we're going to be continuing to get more involved with some of the more specific components of that.

Q. So if I follow the work of the New Mexico Interstate Stream Commission, it is to tee up -- that's a pun I didn't even plan -- the Tools and Templates for Councils, but also for curriculum development and for conservation purposes, as part of, ideally, the development of a Workforce Plan in New Mexico. Is that true?

A. That's correct.

Q. Okay. Let's look at all of these efforts that go into these Regional Plans -- excuse me -- Regional Councils and these Councils who are to come up with plans:

Who is the intended audience for the plans?

A. Yeah, so that's a great question:

One of the real goals of these plans is to see projects moving from ideas to getting built. One of the

primary audiences for that is the audience for the PPP list, which is going to be potential funders for projects and making sure that are described in a way that makes them locally compelling for local decision-making bodies and relevant at the State level for deciders at that level.

Q. Who could be some of the funding sources?

A. Well, there is a couple of State options for funding:

There are several, but including things like:

The Water Trust Board; and,

Construction Industries Bureau.

There are also federal funding sources, and we're also really interested in trying to expand the possibility of public/private partnerships as an additional funding opportunity.

Q. Okay.

I believe in your Testimony

you talk a little bit about the rollout that Ms. Fox will also address, and by "rollout" what I mean is the convening of the Councils:

Your Testimony touches on Self-Convening Councils, and that's been a question that's been asked. Can you tell this Commission more about Self-Convening Councils?

A. Of course:

So the Proposed Rule proposes that the Regions be engaged in groups of 3. There are 9 proposed Regions, and the proposal includes language addressing how the agency would work with 3 of those at a time over the course of a 2-year process to complete the first round of Regional Water Planning.

In the Rule we described...

In my Testimony it's the initial planning phase up until that first plan that gets done for a given Region.

For a Self-Convening Council,

the opportunity there essentially is for someone who is -- or for people who are represented by 1 of the Councils that perhaps are in sort of a second or third wave of initiating the planning process, to start that process sooner. It would require making sure that everything is still consistent with the Rules in terms, particularly, of membership of the Council.

As an Agency we would be happy to work with the Region that would self-convene in that way.

Q. In terms of timing, what is your understanding of the timing of these Self-Convening Councils?

A. Well we would like to get the Rulemaking process completed and move forward. Subsequent to that we will be developing Guidelines that we will be building out subsequent to seeing how the Rules kind of resolve.

At that point it will be time to start working with the Regions that are identified as sort of the first 3.

I would think at that point, also, that would be the opportunity for the Commission to consider any of the Self-Convened Councils if they exist.

Q. Topically, if the Commission would want to follow it further, this discussion is on pages 7 and 8 of your Testimony. Is that right?

A. That's correct.

MS. BECKER: I'm going to touch on 2 other topics with this witness. It is a little bit cherry picked because we did try to provide ample Testimony in advance and highlight that which is particularly useful and relevant.

Q. In your Testimony you also discuss the formation of subgroups within and across Regions. Was that in the Discussion Draft?

A. It was not.

Q. Where did that come from and how does it work?

A. I mentioned specifically that this tack in particular suggests the

creation of smaller Regions, and that was not the only recommendation for creating a smaller Region. Perhaps no one will be surprised that we got no recommendations for making larger Regions, only making smaller ones.

One of the concerns we have about that is we still want to make sure there enough population such that we're not creating something burdensome for a small community to be able to participate in.

The intention of the "Subregion" delineation was to allow folks who might be in like a -- I'm trying to pick a specific example; right?

If you are particularly in a Groundwater area, for example, that has pretty active demands on it, and you have a group of folks who are organized in their -- I don't know. Organized in terms of their understanding and approach on how to deal with that, that could be significantly different than

the work of a larger Region. It might be the kind of thing that would justify creating a Subregion.

Another one of the justifications that we consider and actually there is a proposed edit based on Comments we received immediately before the hearing about this:

The creation of a Settlement for the Pueblo, Tribe, or Nation could be considered as a justification for creating a Subregion. That's also part of the reason that we talked about Subregions that might potentially span multiple Regions. We didn't want to be breaking Settlement areas up.

One of the things that makes that challenging is that they are not all settled, and the idea of having Subregions as a potential was to address that to some extent.

Q. Now I'm going to recommend that you get a drink as we go into this last section, which is those changes that came about since the Petition of the

Proposed Rule on July 17 to today, because we've had Public Comment since then, and your Testimony identified a number of changes, so I would like to go through those with you.

A. Okay.

Q. Would you please identify the Public Comment Period.

A. Yes. The Public Comment Period ran from July 17 to September 27.

Q. Okay. How did...

When I use the term "portal," would you please describe what that means?

A. Yes, there was an opportunity to provide Comment on the Office of the State Engineer Interstate Stream Commission website, a single website, and we had over 75 Comments, and 30 of those were submitted in the final weekend, and you mentioned a couple coming in even subsequent to that.

Q. Was the portal created by the New Mexico Interstate Stream Commission just to facilitate Public Comment for

this Rule?
A. It was.
Q. Okay. In your Testimony, and I would ask you to just follow along beginning on page 11, you have identified changes that you recommend to this Commission in addition to the Proposed Rule. Is that right?
A. That's correct.
Q. Okay. Why don't you just walk through and highlight for the Commission, and they can follow along, again, at page 11:
What it is that you're recommending be changed from the Proposed Rule and why.
A. I'm happy to do that. I'll also mention it is perhaps much easier to follow while following along on the document.
I would also like to just kind of initially thank everyone who provided Comment. This whole process has taken in a huge amount of input from people around the State. I know

it's clear from the Comments we got that people really put a lot of time and thought into preparing those, so we really appreciate it.

Okay. In terms of edits, so these Proposed Changes are in the order that they would appear in the Rule:

The first one here is relative to "Definitions" and would include the proposed...

I'm trying to figure out how to best talk about the changes.

Q. You did it in a Redline strikeout version. Is that correct?

A. That is correct.

Okay. Thank you.

Q. I'll walk you through them; that might help:

Are these changes the same amongst the Testimony of yourself, Ms. Fox, and Director Riseley-White?

A. They are, yes.

Q. In "Definitions," the underlined section suggests an addition. Is that correct?

A. That's correct; an addition for Regional Water Utility Authority.

HEARING OFFICER ORTH: Slow.

MR. ERDMANN: Thank you.

In addition, to create a definition for "Regional Water Utility Authority."

Q. BY MS. BECKER: And why was that added?

A. It was a Comment submitted that indicated that we were going to or needed to have Regional Water Utility Authorities more explicitly and better integrated into the process, and so this is a definition to help facilitate that was helpful.

Q. Let's look at "Regions," and that's the next section:

It looks like you're recommending an addition. What is that?

A. Yes, thank you.

This is the addition that I mentioned earlier. So this is an addition which would add additional

criteria for consideration of the creation of the Subregion based on Tribal water concerns and the needs of Tribal communities. And this recommendation is included because, as I mentioned, trying to figure out how to address Settlement areas is one of the real goals of the Subregion portion, and this makes that even more explicit.

Q. Next, in the Initial Planning Period, it appears you have 2 recommended edits. What is the first one, is it an addition?

A. It is a 3-word addition inside of Section 10A, Subsection (4), so it's just specifying that the meetings that would be held by these Councils are going to be held within the Region itself, so physically the meetings will be located inside of the Region, which was certainly the intent.

But there were a number of Comments received that were concerned about this so we wanted to be more

explicit.

Q. Okay. What about the second edit that you're recommending to add; language:

"... to make planning recommendations and ultimately..."

A. Yeah, so this was a suggestion that came in from a group that's been providing a lot of input along the way.

The intention here is to just expand the considerations that are going to be reflected in the PPPs to make sure that just is more explicitly including planning recommendations.

Q. Okay. "Composition" is Section 12 of the Proposed Rule, and it looks like you have 5 edits.

Well I apologize, yes; 5 edits:

The first one is to add "... or official action..." to the "Representative Member" section. Why are you making that recommendation?

A. That change was suggested by:

The Acequia Association;
Acequia Commission; and,
The New Mexico Land Grant Council.
The reason we wanted to make that change is to make the process inclusive of the Acequia Commission and Land Grant Commission.
Q. Okay. The second one is to add "Artesian Conservancy District" to the "Representative Member" section. Why are you recommending that change?
A. For the sake of being more explicit. We never intended the phrase "Conservancy District" to be so broadly inclusive, but we heard specific Comment that the Artesian Conservancy Districts required additional specificity.
We feel that is an important inclusion for water planning, so that's why.
Q. Next, the addition of:
"One Representative Member identified by the governing

body of any Regional Water Utility Authority."

Please describe.

A. Regional Water Utility Authorities actually entered this discussion once earlier. That's where the phrase "Regional" was used in the 2023 Legislative session. These are water utilities that have chosen to regionalize based on that.

While there aren't a tremendous number of those utilities at this point, it is one of the strategies that the State is really hoping will be central to water management moving forward, so we wanted to make sure those folks were included, so that's why we made that addition.

Q. Just so I'm abundantly clear, you were referencing an Act in 2023 for the regionalization of water systems, and that's why the Water Security Planning Act doesn't have the word "Regional" in it.

A. That's correct, yes.

Q. Okay. And so this is the idea that there is a promotion for regionalization, and those utilities that do regionalize have a slot to be invited as representative members.

A. Yes.

Q. Okay. I'm following.

The next edit is to add:

"... ecosystems interests located..."

And to take out:

"... water advocacy Nongovernmental Organizations with members or local chapters."

Please describe why you're making that recommended change.

A. This edit was proposed by a group of organizations who, frankly, are the organizations we were trying to characterize with this description. The proposal from them is intended to sort of better reflect the groups that work inside of the Regions. That's why we made that change.

Q. The next proposed edit is to add: "... sporting organizations..." Is that similar?

A. Yes. Similarly that was submitted in the same proposed set of Comments, and was a way to be more inclusive and a little bit broader in terms of, again, honoring recreational interests to be inclusive with sporting interests as well.

Q. Turning to "Considerations," which is Section 14 of the Proposed Rule, there are two edits that you made in addition to the Proposed Rule. One is to add the word:

"... wetland..."

Why is that?

A. We heard from many Commenters around the State that the inclusion of wetlands was really essential to managing water. We certainly had no intent at any point of excluding wetlands, but it was clear how important this was to people based on how frequently it came up, so we took

this recommendation to include the word "... wetland..." here.

Q. Next in that section is the additional words:

"... compliance with [and continuing it reads] and implementation of Water Rights Settlements."

Can you describe why that was considered important?

A. Yes:

This recommendation was submitted by the Tribal Advisory Council, and was supported by numerous Tribal governments as being an important clarification relative to the way that Settlements were going to be treated in the process, so we took that recommendation and we are furthering that recommendation on to you as well.

Q. Lastly there is a section of the Proposed Rule on "Criteria," which is Section 15:

There are 4 main edits here

that you're asking the Commission to make in addition to the Proposed Rule. The first one has to do with including WSTAC responses to those Comments, and documentation of any unresolved opposition.

Why are you proposing that change?

A. This is another proposal from the Water Security Tribal Advisory Council, and the intent here is to ensure that WSTAC's perspective on Regional Plans has significant consideration and is apparent when a Project or Plan goes before the Commission. We took this, and we're furthering this recommendation based on that.

Q. The next edit has Comments received from the State, and then it omits the word "... and...," and replaces it with:

"... federal, tribal, and local governments."

Excuse me, it omits "...

agency...," and "... agency..." is replaced with:

"... federal, Tribal, and local governments."

Why are you recommending this change?

A. This was another edit that was proposed by the Water Security Tribal Advisory Council, and we are recommending this change to be more comprehensive and explicit about what we intended here.

Q. Okay. The last 2 edits here...

Let me see if I'm reading this correctly; excuse me.

It is the last edit, and it was to do with the "Criteria" in Section 15C(4) of the PPP types if I'm reading that correctly.

Would you walk through this section?

A. Of course:

This is the section of the Proposed Rule that identifies a non-exhaustive list of PPP types that

could be pursued. All of these edits were suggestions that came from a group of nonprofit entities that would look out for New Mexico water issues in a number of ways.

We propose making these changes because they -- well for 2 reasons:

It makes things more explicit and captures the type of input we're really interested in getting from that group of stakeholders.

Secondly, because it provides a set of ideas that could be useful for regional entities as they get into doing their planning work in their Councils. Having that list specific and accurate to the best of our ability seems the best way to try and help the Councils do their eventual work.

Q. If I understand what you're saying, it actually gives thought to what is possible in some of those PPPs. Is that right?

A. Thank you; that was much briefer

than my explanation, yes.

Q. Do you still, Mr. Erdmann, support and recommend these additional changes that you have included in your direct Written Testimony based on Comments received?

A. I do.

Q. And so as I wrap up, I just would note that there has been Comments also made about the Commission's Staff being too involved or too top-down about this process. Do you care to address that criticism?

A. Well I mean I would say that one of the real goals for the Agency is to get these Councils out running pretty independently. At this point the Councils were changing the Regional boundaries, and the Councils haven't met for, in all likelihood for most of them, for a decade. We're working to create a process where we can try to get those up and running quickly, and provide a whole lot of Tools and Templates and other product stability

to make sure that work is relevant and efficient, and to make sure we are not being overly demanding on people's limited time.

A lot of folks in New Mexico who do water work do it on a volunteer basis, so we are trying to make this an effective and efficient process. The hope is that over time they will become more independent.

We didn't talk about this a great deal, but there are 2 planning phases identified here. One is the initial planning phase, which is essentially from when we finish the Rules and the Guidelines until we have the next Regional Water Plan for an individual Region.

Then the next piece of this, which is much longer, is ongoing, and the hope is that during this ongoing phase we kind of move from having one strategy for Regional Planning to having specific strategies for each Region because they will have taken

ownership and differentiated themselves on that.

Q. What does success of the Proposed Rule look like from your perspective?

A. I think success for this process is going to be identifying really good ideas that exist at local and community levels and move them all the way up to be good projects.

Q. Is there anything else I failed to ask that you think the commission needs to hear?

A. No, I don't think so.

MS. BECKER: Okay. With that, again I'm not excusing the witness, but I am asking the witness to take a seat and actively listen and participate for the duration of the hearing.

I would like to call Ms. Fox; however, I note the time. I am open to suggestions, Madam Hearing Officer, on how you would like to proceed.

HEARING OFFICER ORTH: Is it the Commission's pleasure to take a short

break before we hear from Ms. Fox?

All right. Let's come back at 10:30.

(The Evidentiary Hearing recessed from 10:16 a.m. to 10:34 a.m.)

HEARING OFFICER ORTH: All right. We are back after a short break.

We'll return now to Ms. Becker and Ms. Fox.

Please, each of you be sure not to talk over one another, and please keep it slow. Thank you.

MS. BECKER: Thank you, Madam Hearing Officer.

SARA M. FOX, P.E.,

after having been first called, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BECKER:

Q. With that, would you please identify your name and spell it for the record.

A. Yes:

My name is Sara Fox; S-A-R-A F-O-X.

Q. Let's begin with your qualifications, Ms. Fox:

(NMISC Exhibit 19 was received in evidence.)

Q. BY MS. BECKER: Is your Resumé contained in Exhibit 19.

A. Yes, it is.

Q. Does that accurately reflect your education and work experience?

A. Yes, it does.

Q. And does this mean that you are licensed in both Colorado and New Mexico as a Professional Engineer?

A. Yes, I am.

Q. And yet you're working on planning matters. How is that?

A. I've always had an interest in planning. I did my Master's thesis focused on drought vulnerability and State Water Plans, so although I am trained as an Engineer and have worked as an engineer, I've always had an interest in planning.

Q. What is your working relationship with Mr. Erdmann?
A. We work very closely together; I have spent too many hours on Teams calls.
Q. Would you describe yourself as a member of the Water Planning Program?
A. Yes:
I have been employed by the Water Planning Program since March 2022.
Q. When did you begin working on the Proposed Rule?
A. I began working on the Proposed Rule since its inception, so late 2022.
Q. And for that I believe you're referencing the Act passage in 2023. Are you talking about even the earliest days of lobbying for and advocating for the Act?
A. Yes, I have been involved since the beginning.
Q. What were some of the first steps that the Water Planning Program undertook to implement the Act?

A. Upon passage of the Act, one of the first steps the Water Planning Program undertook was to work internally at the ISC with leadership to determine what contracts we needed to get in order to successfully implement this Act.

Q. Does your written Direct Testimony identify some of the contracts that you're prepared to describe?

A. Yes, it does.

Q. And if you would, then, I'm just going to turn to page 2. Is that the right section?

A. Yes, it is.

Q. Would you please review those initial 3 contracts?

A. Yes:

Initially we pursued 3 contracts:

First with a communications firm to help us with the messaging and overall engagement for the implementation;

The second was a planning firm to help us develop input strategies on how we were going to get input to inform this Proposed Rule; and.

Third was a facilitator to coordinate with New Mexico's Tribes, Pueblos, and Nations.

Q. How did you make the decision to select those contractors?

A. We made the decision because we have been given an opportunity with the Act to really imagine and envision Regional Water Planning in this State. We thought that in order to best do that we should start a whole new campaign, which is the Main Stream New Mexico campaign.

Q. Tell us a little bit about your experience with Main Stream New Mexico.

A. I have been involved with Main Stream New Mexico since it was just an idea:

Main Stream New Mexico, as related by Mr. Erdmann, is the hub of Regional Water Planning, which has a

large educational aspect aimed at getting New Mexicans informed and involved in Regional Water Planning.

Q. In your Testimony, you describe a great deal of public outreach, and I'm wanting to walk through that section:

You describe the role of Open Houses. Could you give a better picture to the Commission of what was an Open House?

A. Yes:

The Open House events, which many of you did attend -- thank you so much -- were our input process that we did in the spring/summer of 2024. They were so named Open House events because they were an Open House format.

This wasn't an input opportunity that you had to show up at a specific time. You could come in and answer questions at stations which were "Who," "Where," "What," and "Why." At each of those stations there was information presented at poster boards

with associated questions after that.

In addition, there were both ISC contractors and the ISC planning Staff at these Open House events available to talk to people about water planning for their specific stations.

Q. Who prepared the questions and designed the outreach of the Open House events?

A. We worked with the planning firm Brendle Group collaboratively and iteratively to develop the questions that were presented at the Open House events.

Q. And what was your role in the Open House?

A. Specifically I was at the "Where" station. If you came and wanted to kind of talk about the Regional boundaries, I was sitting at the "Where" station to discuss those, though I was familiar with every aspect of the programs and helped out as needed at other stations and the public that was attending.

Q. And how many Open House events were there?
A. There were 16.
Q. And I believe there is Testimony about the location of each of those 16 in your Testimony. Is that correct?
A. That is the correct. The location of all 16 Open House events is within the Engagement Report, which is Exhibit 20.
(NMISC Exhibit 20 was received in evidence.)
Q. BY MS. BECKER: Great.
That was all over New Mexico; right?
A. All corners of New Mexico.
Q. And how many did you attend?
A. I attended 16.
No, I attended 14 out of 16 because I got sick, and that was kind of disappointing for me.
Q. You also identified there was a hybrid option in your Testimony. How does an Open House hybrid work?
A. Yes:

The online Open House, as we termed it, was developed to be as similar to the in-person event as possible. You went through a series of surveys in which you would be presented with the information that was on the posters, and then asked the same questions that were asked in the Open House event.

The only difference was that the online Open House had online-only questions for areas and topics that required additional background than we wanted to delve into in the Open Houses in person.

Q. What did you do with all the information that you received during these events?

A. So we received over 10,000 data points in association with the Open House events, and we developed a series of reports, 3 reports coming out of the Open House events.

(NMISC Exhibit 21 was received in evidence.)

(NMISC Exhibit 22 was received in evidence.)

Q. BY MS. BECKER: Are you referencing Exhibits 20, 21, and 22 within your Testimony.

A. Yes, I am.

Q. Would you describe those in more detail, please, and tell me, or rather tell the Commission what's important about capturing this type of information?

A. Yes:

In line with the Act we are committed to transparency and large public engagement. The Engagement Report is essentially what I call the Data Report. Everything we asked, everything we heard is presented in a series of graphs, numbers, with exact worded questions that we heard and all of the written Comments that we also heard. It comprises a very large report, if you all have are familiar with it.

There is also an Online Data

Dashboard for all of the questions that were "DOT questions," as we call them.

The Observations and Considerations Report, which is Exhibit 21, essentially extracts information that we recovered from the Open House events both from the data and through the conversations that we had all around New Mexico. It gives essentially observations and considerations for ISC ahead of the trafficking of the Discussion Draft.

Then the Summary Report, which is Exhibit 22, essentially summarizes kind of, you know, bottom line/up front for our Legislature in a much more digestible way. It contains the takeaways and the processes that we worked through.

Q. Were you here and present for all of Mr. Erdmann's oral Testimony this morning?

A. Yes, I was.

Q. And so you heard him talk about Main Stream Magazine, Exhibit 18.

A. I did.
Q. And when was that published?
A. Main Stream Magazine was published in conjunction with:
The Observations and Considerations Report;
The Summary Report; and,
The Discussion Draft at the January ISC Commission meeting earlier this year.
Q. Okay. Just so I follow, in January of 2025 that campaign with these 3 critical Reports on what you've learned and where you're going, that was presented to the Commission.
A. Yes, it was.
Q. Okay.
What is the role of education from New Mexico Interstate Stream Commission Water Planning Program's perspective?
A. Education underlies all aspects of Regional Water Planning and all planning in general. We will make better decisions if we bring more

people into the fold, and we do that by educating people. We see kind of every opportunity and anything we do as an opportunity to reach more people and let more New Mexicans know more about the water here in New Mexico.

Q. What is the reality of the water situation in New Mexico?

A. The reality of water in New Mexico is we are looking at a drier future because of ongoing aridification due to increasing temperatures from climate change.

Q. What did you do after hosting the meetings and forums, and then sharing the resources in this online campaign?

A. (No audible response.)

Q. In other words what was next?

A. After the reports were authored, the ISC Planning Program and leadership worked together to develop the Discussion Draft Rule and Guidelines.

Q. Is that what is referenced as Exhibit 15 in Mr. Erdmann's Testimony?

A. Yes, it is.

Q. Today we are here on the Proposed Rule, Exhibit 16. Is that right?

A. That is correct.

Q. What is the role of the Discussion Draft in relation to the Proposed Rule?

A. Yeah.

During our Open House events many people were appreciative of us bringing them in right at the beginning, but they wanted an opportunity to engage when we had more Draft language.

The Discussion Draft period essentially was another round of input that we went through that gave, you know, New Mexicans an opportunity to see more along the lines of what we are thinking. At that point we heard significant Comments that have resulted in significant kind of structural changes to the Proposed Rule you see before you today.

(NMISC Exhibit 23 was received in evidence.)

Q. BY MS. BECKER: Would you please

look with me at what's attached to your Testimony as Exhibit 23.

A. Yes.

Q. Describe that.

A. The Compilation of Input Report is essentially what I like to think of as the Engagement Report's kind of sister Report, but instead of for the Open House events, it is for the Discussion Draft period. The Compilation Report summarizes exactly what was asked and what was heard in 1 package essentially.

Q. What outreach did you do in association with the Proposed Rule's Public Comment Period?

A. We have gone above and beyond for outreach in the Proposed Rule section:

We have had our Comment Period open for over 70 days;

We have committed significant resources to advertising this public input opportunity, which is all summarized in Exhibit 25.

(NMISC Exhibit 25 was received

in evidence.)

MS. FOX: That includes:

Placing ads in most of our major newspapers;

Having advertisements on radio including advertisements on Meta; and,

Including advertisements that I think are called programmatic things, like ads that pop up when you are on different websites. Those were also purchased to make sure that New Mexicans were aware of the Comment Period.

Q. BY MS. BECKER: Okay. Let's walk through some of these particular actions, because they are really important:

When did the portal get posted?

A. The portal was posted on July 17 after you all, the Commission, initiated the Rulemaking process.

Q. Was it also published in the New Mexico Register?

A. It was published in the New

Mexico Register on August 26th.

(NMISC Exhibit 24 was received in evidence.)

Q. BY MS. BECKER: Is that Exhibit 24 as contained in your Testimony?

A. Yes, it is.

Q. Okay. That outlines when the hearing will take place and how it will be conducted. Is that correct?

A. Correct. The notice outlines all of those processes.

Q. And what you just identified as Exhibit 25, that's the Summary of Publishing and Outreach?

A. Yes, the Summary of Advertisements that we purchased in support of making sure that this opportunity to provide Comment was widely available and known to people.

Q. Did you say something about newspaper and radio ads yet?

A. Yes, I did.

We published newspaper ads in the Santa Fe New Mexican, Albuquerque Journal, and I can't remember the

newspaper down in Las Cruces, but that's --

Q. The Sun.

A. The Sun.

In addition we placed ads strategically in other more rural newspapers, and also placed ads on the radio, in addition to ads on social media and just like more internet-based ads as well.

Q. Are you familiar with the publishing requirements of the State Rules Act?

A. I am.

Q. Was any other Notice required either by that Act, or other Acts, for purposes of Noticing the Proposed Rule?

A. Yes:

We also sent Notice to the Small Business Regulatory Advisory Commission, which is Exhibit 26.

(NMISC Exhibit 26 was received in evidence.)

(NMISC Exhibit 27 was received in evidence.)

MS. FOX: We also sent Notice to the relevant Legislative committees, which I believe is Exhibit 27.

Q. BY MS. BECKER: Are you able to confirm that all requirements of the State Rules Act were met?

A. Yes.

Q. Is it fair to say that the Water Planning Program went above and beyond the minimum threshold for what Notice is required?

A. I believe so. I believe so.

The...

MS. BECKER: Just one moment, please, while we make sure our audio is working.

HEARING OFFICER ORTH: Sometimes they need new batteries.

Okay. We're back.

Q. BY MS. BECKER: I'm going to ask my question again just to make sure we have a seamless transition.

A. Thank you so much.

Q. Would it be fair to say the Water Planning Program of the New Mexico

Interstate Stream Commission went above and beyond the minimum required?

A. I believe we have.

Q. Okay. Let's turn now to a brief discussion of each Subsection of the Proposed Rule:

With that I'm going to ask everyone to turn to what has been identified as Exhibit 16.

While we're doing that would you identify the requirements set out in the Act that the Rule must address?

A. Yes:

The Act requires for the Rules to address, at a minimum, the following 5 items:

Number 1: The boundary and number of Water Planning Regions in the State;

Number 2: The criteria for Commission approval of a Regional Water Security Plan, with prioritized Projects, Programs, and Policies;

Number 3: The procedure for a Regional Water Planning entity to

develop and provide Notice to the Commission of issues and concerns related to Public Welfare of the Water Planning Region;

Number 4: The composition of a Regional Water Planning entity; and,

Number 5: The procedure for a Regional Water Planning entity to consider Public Welfare values and the needs of future generations of New Mexicans.

Q. Does the Proposed Rule cover each of these 5 requirements?

A. Yes, it does.

Q. All right. Let's go through it, and let's start with Section 9, which is the "Regional Water Security Planning Regions":

Your Written Testimony indicated that you did a lot of review based on Comments to the Discussion Draft that are put into the Proposed Rule that was submitted to the Commission. Am I getting that right?

A. Yes.

I think of all the aspects of this process, in thinking about what the Regions are, has occupied a lot of my brain space for the last 2 years.

Q. Where did the 9 Regions originate?

A. The 9 Regions originated initially from input received in the Open House events. We asked a whole series of questions to figure out what was the most important kind of organizing principle for our Regions to have.

What we heard was over 70% of New Mexicans wanted our Regional boundaries to follow hydrologic boundaries, so that means our Surface Water boundaries and/or Groundwater boundaries.

Q. In substance Section 9 is really Paragraph A. It says that there are 9 Regions.

Those Regions are contained in the map that's attached to the Rule. Is that correct?

A. That is correct.
Q. That is so short, but substantive. Why is that?
A. It's so short because really defining where our Regions are is the first step of figuring out how we are going to Plan. Everyone wants to know who is in their Region and how are we going to Plan together?
The first thing to identify is, well, where is my Region? It was really important that this was placed in Section 9, really, really up front in the Rule.
Q. We heard from Mr. Erdmann that, in addition to his examples for "... Subregions...," that Section B was created to have "... Subregions..."
Could you tell us a little bit more about the relevance or importance of Subregions?
A. Yeah, so "... Subregions..." was added in response to many Commenters who thought the Regions were too big, in addition to having kind of some

other issues.

The Subregion process was envisioned as a way to allow groups who were already planning together a process by which they can continue to plan together, but then integrate with an overall planning process.

Q. Who do you think is most likely to become a Subregion or seek to become a Subregion?

A. I think the most...

I think that areas of Indian Water Rights Settlements are the most likely people or groups who would seek to be a Subregion because there is a lot of negotiation and planning that goes into an Indian Water Rights Settlement.

Another group that might want to be a Subregion is, say you're in an area that is Groundwater dominant in an area or Region that is Surface Water dominant. You may choose to become a Subregion because you have hydrologically different issues than

the rest of the Region.
Q. Why would a Council not just have, say, a working group or subcommittee to deal with these issues?
A. Because they may not want to...
They might still want to have a subcommittee or something like that, but the Subregion process is really aimed at providing kind of continuity with ongoing planning processes, versus a subcommunity or subgroup or whatever type of group you want to call it. That would be kind of under the new Planning process.
The Subregion process is really aimed at capturing existing ongoing planning and integrating that into the Regional Planning process.
Q. Do you have your Testimony in front of you?
A. I do.
Q. If the Commission wants to learn more on your bases for the Planning Regions, is that contained on pages 8 through 10?

A. Yes, it is.
Q. Okay. With that, let's turn then to Section 10:
"Initial Planning Period."
Why does the New Mexico Interstate Stream Commission Staff have such a supportive role in the IPP and why is that significant?
A. We have delineated the Initial Planning Period from the ongoing Planning Period because, and I don't know the last time anyone else started something brand new, but I needed a lot more support when I started out than when I got going.
The Initial Planning Period is aimed to essentially capture the additional support that will be needed to start up something brand new versus the ongoing Planning Period in which hopefully these Councils would differentiate themselves.
Also, it is an easier task to update existing plans rather than coming up with one from scratch.

Q. Looking at Section 10, what is the expectation and commitment of the New Mexico Interstate Stream Commission Staff during the Initial Planning Period?

A. The expectation of NMISC Planning Staff is to essentially be the guide envisioned in this process, or be kind of a facilitator or person who can grab different ideas or things from different State agencies and bring them together, work with the Tools and Templates, and provide a lot more support for getting things off the ground.

Additionally, one of those key roles will be extending invites to begin the convening of the Councils.

Q. Looking at your Testimony, it appears that pages 12 through 15 cover much of this Initial Planning Period. Is that right?

A. That is correct.

Q. Is the Commission to understand that the role of the Interstate Stream

Commission is to invite the representative members?

A. Yes.

Q. And also coordinate all of those resources such that the Council can hit the ground running?

A. Yes.

Q. Aid with admin support such as contracts for facilitators if requested?

A. Yes.

Q. And then providing "technical support."

We heard Mr. Erdmann talk about Tools and Templates. Is that what is meant by "technical support"?

A. Yes:

Tools and Templates are one of the ways that we envision providing support to the Councils. The Tools and Templates can be more technical, they can be less technical, but that is the avenue that we're pursuing as a large portion of the Water Planning Program going forward.

Q. Lastly, in Section 10, is the role of the New Mexico Interstate Stream Commission to aid in keeping track of Region-specific stakeholders?
A. Yes.
Q. Why is that so important?
A. (No audible response.)
Q. In other words why is that a task of the New Mexico Interstate Stream Commission?
A. I don't know if anyone has really had to do the drudgery of managing an email list, but it is quite the task to make sure you have all the people who want to be involved. We thought it would be very important to make sure this process is open and accessible to anyone who would like to be a Region stakeholder. Therefore, we are taking on the burden of managing that process during the Initial Planning Period.
Q. You heard Mr. Erdmann's Testimony talking about Tools and Templates. Is the Initial Planning Period really where the Tools and Templates are most

used or most identified?

A. I think specific Tools and Templates are going to be more relevant during the Initial Planning Period, and the other ones will be more relevant in the ongoing Planning Period.

However, in specifically thinking about the organizational templates, which will provide different potential Operating Principles with all the requirements outlined in the Rule, or different kinds of like setup documents. That will be more helpful in the Initial Planning Period.

Once your Council is set up and has an Operating Principle document, that Tool or Template won't be as helpful going forward, so we anticipate the Tools and Templates evolving over time to meet the needs of the Councils as best we can.

Q. Looking at the Section 10A(5), which requires, "... accessing the best available data and science...,"

how does the NMISC aid in determining or aiding with "... the best available data and science..." and cultivating that?

A. I haven't worked in State Government super long, but it's very complicated around here. I feel like the ISC Staff going forward will be a point person to help Councils identify different resources that will be maybe housed in the Water Data Act, but other things around kind of the State that can be relevant for that planning process.

We are aiming to be a guide or resource as New Mexico Main Stream kind of transforms into this hub of resources going forward.

Q. Are Councils able to identify scientific sources and studies that members are aware of?

A. Sure.

Q. Could Councils also ask the New Mexico Interstate Stream Commission for assistance to satisfy data gaps or aid

in gathering science?

A. Yes:

We anticipate potentially that a Council may identify some data gaps or maybe model gaps, or whatever other types of gaps they have as a potential Project, Program, or Policy that could land on that prioritized list of PPPs in a Plan.

Q. Okay. What is the benefit from your perspective of having Tools and Templates ready?

A. The Tools and Templates really answer the question like, "Well Sara, now what?" We really want to equip our Councils with materials to get started and hit the ground running.

A lot of the Tools and Templates are aimed at trying to figure out or provide a way for people to move forward after this Proposed Rule is adopted and the Guidelines are also adopted. We're hoping that the Templates will then be there to if they say, "I don't know where to start with

the Operating Principle." I'll say, "Well here's 3 options that would all fit our criteria; let's work within that."

Maybe it's, "Sara, I don't know what type of PPP I should be advocating for." I'll say, "Well our Small Water Decision Support System can help you identify potential PPPs."

Q. This may seem like an unusual question, Ms. Fox, but how do you feel about the Initial Planning Period?

A. I think it's really great honestly. I think that breaking it out into an Initial Planning Period and an ongoing Planning Period really helps define expectations for these Councils. I think that defining expectations up front is really key to a successful process.

Q. How do you handle and/or respond to the criticism that the New Mexico Interstate Stream Commission Staff is too involved or heavy-handed in providing information or directing

connections or information in the IPP?
A. I think that without essentially ISC Staff being in these areas to help provide resources, Councils have, you know, the potential to maybe hit a roadblock and not know where to go.
The Staff is really supposed to be there to provide resources to figure out more of the admin facilitation stuff such that these Councils can move forward through this process. Without the ISC Staff support, I think there is a lot more chances for us to stumble.
Q. Let's look at Section 12. This section is:
"Composition of Regional Water Security Planning Councils."
I see that the Proposed Rule is organized into "Composition," "Consideration," and "Criteria," or the 3 Cs. The first one is "Composition."
Again, why did you start this

way? Why is it so important?
A. After figuring out where your Region is the next question, or the next obvious question, at least to me, is who is the people who are going to be planning this Region? It makes the most sense for the composition of the Councils to come next.
Q. Did you get feedback from the Discussion Draft that aided in your compositional framework?
A. Yes:
We received a significant amount of Comments during the Discussion Draft period that resulted in changes to the "Composition" as it is in the Proposed Rule today.
Q. Do you support the language of Section 12 regarding:
"Composition of Regional Water Security Planning Councils"?
A. I support it with the additions described later in my Testimony.
Q. There is one change adding:

"... a Representative Member."

Is that what you're referring to?

A. Yes.

Q. Okay. Let's look at describing this:

I think it would help to say categorically how "Composition" is organized.

A. The Regional Planning Council is proposed to have 3 types of membership, "Representative Members," which are essentially governmental members of the Council;

We have "At-Large Members," which represent different types of water uses; and,

Then we have "Non-Voting Members," which represent entities with either Water Rights interests within the Council or hydrologically connected Regions.

Q. Let's go through those in a little more detail starting with the

"Representative Members."

How are those "... Members" determined?

A. Representative Members are essentially Members that will be invited on to the Council by ISC and are appointed by the resolution of each, like, governing body of any entity identified on that list.

Q. Just to be clear, those are invitations.

A. Correct.

Q. Voluntary based.

A. Correct.

Q. The entity self-selects who, if anyone, to participate.

A. Correct.

Q. How does the New Mexico Interstate Stream Commission know in each Region all of these governing bodies?

A. Well generally speaking the governing entities are known and mappable.

We've done a preliminary kind

of mapping exercise identifying and kind of overlaying different boundaries into Regions, to identify the initial invitation list that will be refined and revisited ahead of any invitations going out.

Q. The Proposed Rule has identified the Land Grant Council as the governing entity. Why is that?

A. Land Grants are part of the kind of water management ecosystem in New Mexico. It is important that your active Land Grants, as appointed by the Land Grant Council, would also be a part of these Councils.

Q. Is the Council created and maintained by the Governor of the State?

A. The Land Grant Council, yes.

Q. Were there any governing entities that were not included in the "Representative Member" section?

A. Yes, the municipal -- they have a name.

Q. I believe you refer in your

Testimony to "Mutual Domestic Water Consumer Associations," or "MDWCAs"; correct?

A. Correct. Those are not listed as a "Representative Member," although they are listed as an "At-Large Member" because there is no kind of collective agency representing them at the statewide level.

With the inclusion of the additional "Representative Members" for Regional Water Utilities, if many Mutual Domestics were to get together and move through the Resiliency Act or the Regionalization Act that's been alluded to in Mr. Erdmann's Testimony, that would make them a "Representative Member."

Q. You further support the Proposed Change of the New Mexico Interstate Stream Commission post the Petition to have regional water -- excuse me -- Regional Utility Authorities as Representative Members.

A. Yes, I do.

Q. Okay. What does the Proposed Rule say for individual Acequias?
A. (No audible response.)
Q. I'm going back a minute.
A. Yes.
The Acequias are listed as "Representative Members," and their representation is based off of Regional Acequia Associations within the Region. Those are essentially collectives of Acequias who have gotten together and developed and formalized into a Regional Acequia Association.
If no such Regional Acequia Association exists within a Region we would approach the New Mexico Acequia Commission to have them appoint someone from within that Region to fill that Representative Member spot.
Q. Are there Acequias in every Planning Region?
A. I think they are in most of the Regions except for the Eastern Plains.
Q. And why not just invite all of them?

A. There are numerous Acequias all over the State. I think I've heard anywhere from like 500 to 800, and that's a lot of people. We don't have a consolidated list of leadership that's updated, so therefore we are relying on the Regional Acequia Associations, which are a little bit smaller in number, to help us make sure we are collectively representing them.

Q. But for the Tribes, Nations, and Pueblos identified in "Representative Members," are all these governing entities Political Subdivisions of the State?

A. Yes, they are.

Q. Okay. Let's now look at the second category:

I believe you described "At-Large Members"?

A. Yes:

At-Large Members are aimed to represent essentially a variety of users of water that are non-governmental. These are:

Ranchers;
Farmers;
Public education institutes;
Environmental conservation NGOs;
Water-based recreation;
Mutual Domestics;
Commercial, industrial, and mining;
Special districts pursuant to Chapter 73 that aren't already identified in the Representative Members;
The special existing Regional Water Planning Steering Committees; and,
The one general at-large member.

Q. How are the At-Large Members determined?

A. At-Large Members are going to be identified by Representative Members initially.

We also are aiming to have, like, a portal or a form or something

that would allow somebody who thinks that they would fulfill an At-Large Member to self-identify as well.

We are trying to make sure this is open to as many people as possible. Your self-identified At-Large Members, and maybe known At-Large Members within a Region will be brought to the Representative Members for identification.

Q. Looking at Section (2), or Subsection (2), it does identify that this is capped at 10. Is that correct?

A. That is correct.

Q. And why is that?

A. This is capped at 10 because we could just expand forever I think. The idea is that we want to make sure that we're getting the breadth of all different types of water uses within each Region without having just so many people there.

Q. It has been a criticism that you have read in Comments that these Councils may be multi, multi members.

Is that correct?

A. That is correct.

Q. Okay. I believe that's going to be more in the Testimony of Director Riseley-White. Is that correct?

A. That is correct.

Q. Okay.

Would you please describe then the "Non-Voting Members."

A. Yes:

The Non-Voting Members fall into 2 categories:

There are 3 Non-Voting Members for entities who own Water Rights in a different Council. I think one of the easiest examples is essentially anyone within the Middle Rio Grande Council who is a San Juan-Chama contractor with significant water assets in the Upper Rio Grande Council. Those members might choose to try to become the Non-Voting Member in the Upper Rio Grande Council.

Additionally we have reserved 2 Non-Voting Members for Regions that

are hydrologically connected. We anticipate that the 3 Regions that are in the middle, along the Rio Grande, would each have Representative Members from those Councils that are hydrologically connected.

Q. What is the role, Ms. Fox, of Region-Specific Stakeholders? You didn't mention this as a category because it's not 1, 2, or 3, but it is in "Composition." Could you describe that?

A. Yes:

The Act requires us to identify stakeholders separate from the public in general. Region-Specific Stakeholders are essentially anyone who is interested in the Regional Planning process but maybe does not qualify to be on the Council.

It's pretty easy to become a Region-Specific Stakeholder if you live in the Region. You just provide your email and ZIP Code and you're a Regional Stakeholder.

If you're someone who maybe lives outside of that Region you can provide your email and a statement of interest concerning why you want to be included as a Regional Stakeholder.

We will also be identifying additional stakeholder opportunities in the upcoming questions regarding the Guidelines.

Q. Is this the list that you referenced earlier that the New Mexico Interstate Stream Commission is managing from the perspective of the Initial Planning Period to make sure anybody who wants more stays in the loop?

A. Yes, it is.

Q. Okay. Then continuing in the same section, there isn't a section entitled "Public." What about the public?

A. So the public, as we'll discuss here very shortly in the next section, still must be informed as part of this Regional Planning process, but that

will generally be during times of Plan Development, with the Regional Stakeholders, we anticipate, being more actively involved in aspects, you know, when we're not actively developing a new plan or updating a plan.

Q. Let's look at that:

I believe you're alluding to Section 13:

"Regional Water Security Planning Council Meeting and Input Requirements."

Is that right?

A. That is correct.

Q. Is the public specifically addressed there?

A. Yes, it is.

Q. Please describe how.

A. Subsection B(1) specifically calls out notification to the public and a bunch of other people, as stated there, as part of any development of any Regional Water Security Plan.

Q. That's for the development and vetting, and also the prioritization

that goes into the plans. Is that correct?

A. That is correct.

Q. Why is it so important to have meeting requirements of a voluntary body?

A. The meeting requirements are really important to this voluntary body because we are really aiming and hoping that these Councils will serve as a spot by which, you know, we can start solving our problems together.

By having either biannual meetings when we're not in the planning process, or 4-times-a-year meetings when we are during a planning process, we are aiming to essentially establish this group as a spot that we can go to in order to have some dialogue with people and solve problems without litigation.

Q. I believe this section also speaks not just to the meeting requirements, but the Notice requirements. Would you address that

for the Commission?
A. Yes:
In keeping with the Act, public engagement is really key to everything about the WSPA. It's really important for us to be very specific about how much time ahead any Council meeting would need to be noticed to the relevant stakeholders, which is 14 days.
Q. I believe additionally in your Testimony you identify that here is Notice of in-person, virtual events, and at least 60 days for Public Comment on any Draft. Did I get that right?
A. You did.
Q. Okay. Let's move to Section 14.
A. Okay.
Q. That is:
"Considerations For Council During Planning Processes."
In this section there is both required considerations, and those that may be considered. Why is that?

A. There are 2 distinct sections required for consideration which directly are aligned to how those are presented in the Act. The required sections are all delineated in the WSPA itself.

Through the input process at both the Open House events, as well as the Discussion Draft, a couple other things also bubbled to the surface as things that people wanted Regional Plans to tackle, and those are delineated in Section B, the "... may..." section.

Q. Will each of those 9 required considerations be supported with Tools and Templates by the Interstate Stream Commission Staff?

A. Yes.

Q. Would you give an example?

A. (No audible response.)

Q. And again, I am not trying to repeat the Testimony of Mr. Erdmann as it relates to specifics, but, for example, if you could just identify how

would coordination or what kind of Templates might be in this required section of "consideration"?

A. Yes:

If we' look specifically at Section A(1), it says:

"existing Water Plans and water resource and planning initiatives;"

We are proposing to build essentially the Atlas of Plans as described by Mr. Erdmann that's really aiming to build initial guidance.

I don't know if anyone read the last Water Plan, but there is a lot of good information in that, and they should be looking at this first.

Q. That was a great example.

What about coordination with other agencies? Is that a feature of what you plan to do to aid the Councils?

A. Yes.

One of the kind of Proposed Rules of ISC Staff in these Regional

Planning Processes is to act as this guide, this hub of information and kind of a connecting point.

One of the roles will be for us to, you know, say, "You have this really great idea, but maybe you don't know that," you know, "NMED has the River Stewardship Program, and this Policy or Program or Project would be a really great fit for that, so let's connect you over there."

State government is very large and complicated. I have not been here very long, but even so having someone who could help navigate all the different types of funding and stuff like that will be a key role to making sure that we are utilizing as many resources as possible to get these plans and these PPPs kind of through the pipeline.

Q. Ms. Fox, look at A(5).

A. "... A(5)."

Q. (Reading:) "access to water for domestic use;"

How will you provide information on that?

A. Yes:

"access to water for domestic use" is probably going to be more of a facilitated conversation with the appropriate OSE District Office.

The OSE District Offices are full of really, really smart, very well-informed people who are really rock stars. They really are. I don't know if you have talked to them recently, but they are great.

I think we can make sure that we're connecting our Councils with, you know, resources within even our own Agency, or the Office of the State Engineer, that is going to be a key aspect of ISC Staff going forward.

Q. Ms. Fox, I'm noticing again the term "best available science..." in this section. Did I read that correctly in A(3)?

A. Yes.

Q. What is that and how will it be

considered?
A. The "best available science...," much like you know and I learned in engineering school, science is an evolving process and there will always be more and better data. We can always get more and better data.

I think "best available science..." is really about making sure that we are trying to go to what is most relevant, most available, newest and best QA/QC'd, and a lot of that is going to be looking at the Water Data Act and work they have been doing to aggregate our data together.

Q. If you would, please look at the last paragraph in this, Section D. Could you explain why that paragraph exists?

A. Yes:

One of the easiest things to kind of stall a planning process is to say, "Well we don't have enough data in general, therefore we can't possibly do anything." I think that is not

really...

I don't want that to be an excuse for us stop kind of moving forward in this planning process. I think it is very hopefully clear to many people here today online that it's getting warmer. As it gets warmer, everybody gets thirstier, so our water resources are not going to go as far.

So yes, we can always use better data, but I think we also can't use not knowing enough as a reason to not act.

Q. It appears to me that I skipped over Paragraph C of Section 14. That is going to be covered by Director Riseley-White. Is that correct?

A. Yes, and Mr. Chakeres.

Q. Thank you. Thank you.

With that, I am prepared to move on to Section 15. Are you?

A. I am.

Q. Okay. This states:

"Criteria for approval of Regional Water Security Plan."

Like Section 14, which is the consideration that there are 9 criteria that must be documented. Are those the same 9?

A. Yes, they are.

Q. And why is documentation so important?

A. The documentation is really important because we are really trying to focus this planning process on the outcomes rather than the process.

There are a variety of different water problems across the State and a variety of different capacity issues across the State. We do not anticipate each Council going through the exact same process to consider all of the required considerations, but we do want to know what process was taken. That's why we have put emphasis on documentation.

Q. When I look at Paragraph B it says:

"Plans may include documentation that the needs

of rural and urban populations within the Region were considered."

Why is that called out?

A. That's called out because we're a largely rural State, so it's really important. I think a lot of times there are processes out there, and I don't know all of the processes, but they do focus on just like, "How many people were helped?" When you are in a largely rural area that doesn't have as much population, it's harder to consider. I think making sure that there is an emphasis on both the rural and urban aspects distinctly is important to document.

Q. Turning now to C, which is, as I understand it, the sum and substance of these PPPs.

Would you tell us how that works from your perspective?

A. I have spent so much time thinking about prioritization, and I have considered many...

Well not just me, but the Planning Program and many people have considered lots of different ways that we can prioritize things across the State. You can have...

I'm sure people are familiar with kind of the, like, rubric approach in which you kind of assign numbers to different aspects and then you get a final number at the bottom.

Other aspects that we consider is essentially bucketing by type, so that could be watershed projects or supply projects.

Thinking about and looking at lots of our other states or sister states, like Colorado and Texas, we are trying to figure out a way that makes sense for us to prioritize. What we have landed on is essentially a Readiness bucketing prioritization scheme.

Q. I asked the same question of Mr. Erdmann, but it's helpful to hear what is envisioned as a Policy, what

is a sample Project, and what is a sample Program?

A. Yes, there are many different things:

An example Project could be, and kind of the easiest one to think about is pouring concrete. It could be something like developing a 40-year Water Plan or riparian restoration and monitoring.

A Program could include developing an asset management planning process, developing, you know, a systemwide or countywide conservation Program, or a large scale educational campaign.

Policy examples could be really focusing on the regionalization of different Domestics, developing a water banking policy, or even initiating a formal active water resource management process for an area.

Q. It appears that you have expanded on this criteria in your Testimony, and that is pages 19

through 21. Is that right?
A. That is correct.
Q. Okay. Having heard from Mr. Erdmann, and now you, the PPP language has been around for approximately 10 years. It is identified in the Act, and it's identified in the Rule, but I think it would help the Commission to understand how is the PPPs discussed in the Proposed Rule is different than maybe historically how it was used in prior planning efforts.
A. Yes:
I think one of the main differences between PPPs, as many people may have known them from the past, or PPPs in their current iteration is the aspect of prioritization.
What's really key, as we asked from the Legislature, is to have prioritized Projects, Programs, and Policies.
I think another main

difference of the PPPs in previous iterations was kind of just like anything, just a big bucket altogether versus now we have separated them into this Readiness Framework; ideas, scoping, and then ready to proceed.

We can then start building essentially a pipeline of PPPs so that we have various things kind of in the works at different stages that maybe require different amounts of funding to move forward, so that we always are thinking 5 years out, 10 years out, 50 years out. This Readiness Framework really, we hope, will build that up.

Q. In addition your Testimony articulates that prior efforts may not have had required considerations for Councils to evaluate. Is that true?

A. Yes:

I wasn't around during the last couple of rounds of Regional Planning, but my understanding is that some of the PPPs that existed in the 2018 State Water Plan are mutually

exclusive. It was kind of just like all types of solutions, but no kind of consideration of, "If we take this PPP, now these 3 PPPs are off the table."

This process, because we are requiring both the PPP type and a Sponsor to land on the PPP list, those are the only requirements. We are hoping that by requiring those 2 items, and specifically the Sponsor, that we can help kind of move PPPs essentially through the pipeline from ideas to scoping to ready to proceed, and then on to whatever funding for implementation.

Q. Would you talk just a little bit more about what you mean by "Sponsorship"?

A. Yes:

"Sponsorship" is essentially the entities. You have single or multiple who are signing up to be the person who is shepherding this PPP through.

You know, a Sponsorship could be the person or the group that is intending to implement the watershed or restoration Program, or it could be the town that would like to have this new raw water tank being developed.

Q. Looking at Section 15 there is a documentation aspect that's required. There is necessary documentation for rural versus urban that you have just discussed.

As you have verbally described Subsection C, what I understand is that it must be prioritized, Number 1;

Number 2, it must list a Sponsor.

A. Correct.

Q. Number 3, it must be sorted by priority. Those are the 3 priorities you just described.

A. Correct.

We anticipate each Council essentially coming to you all, the Commission, with essentially a prioritized PPP list that has:

Priority Number 1: Ideas;
Priority Number 2: Scoping;
and,
Priority Number 3: The essentially ready-to-proceed stage.
From there they would be listed down in order of priorities, so when we go to the Legislature and they ask, "Hey ISC, what are the top priorities for the State," we can give them those kind of top 3 at different levels and different needs across the State.

Q. Is it your understanding that the New Mexico Interstate Stream Commission Staff will prepare guidance on how to submit this information?

A. Yes. The PPP prioritization scheme Template is forthcoming in the organizational Templates.

Q. Furthermore is it your understanding that there could be multiple funding sources for these priorities?

A. Yes.

I think one thing that's important to note is that just because there are maybe 2 or 3 on the list of your associated prioritizations, that doesn't mean that you are not going to get funding until something else happens. Anybody who lands on the PPP list is still open and encouraged to pursue any and all funding sources that they have available to them.

Q. Okay. Then continuing to read through, it identifies that these lists may change over time, or they can be changed out in subsequent updates. Is that correct?

A. Yes, because this is one of the main asks from the Legislature. We are requiring that the PPP list be reaffirmed or updated every 5 years, and also reaffirmed or updated every 10 years, along with an updated full Water Security Plan.

Q. Okay. I think this will close me out here:

There is, in the last

paragraph, "Subregions," and the idea that they:

"... shall integrate subregional priorities into a single prioritized list of PPPs..."

Can you describe that further?

A. Yes:

One of the most important provisions in this Subsection, which feels like ages ago at this point, is that ahead of becoming a Subregion, as approved by the Commission, they must up front determine, with the Council, a process by which they will be integrating their PPPs with the larger Council.

Now that's really important because what we want to make sure is that the PPP lists are well supported by the Region, making sure we are integrating Subregions into that process on the front end before any Subregion is ever approved, so we can ensure that we have regionally

supported PPPs at the end.

Q. I believe Section 16 is going to be covered in the Testimony of Mr. Chakeres. Is that correct?

A. That is correct.

Q. Okay.

With that, then, I would like to ask you the same question I asked Mr. Erdmann, which is how would you describe success of the Proposed Rule?

A. I think success of the Proposed Rule is establishing these Councils as a forum by which people can come together, problem-solve, and really kind of build those PPP pipelines, and then move the PPPs through the pipeline from ideas into ready to proceed, and then ultimately into implementation, which will help make sure that we are meeting our Water Security goals.

Q. Do you still support your Written Prefiled Testimony but for the recommended additional changes that you have noted and that Mr. Erdmann spoke about one by one?

A. I do.
Q. Is there any question that I failed to ask you that you think the Commission needs to hear?
A. No, I think we're good.
MS. BECKER: With that, I would ask you to take a sip of water while Mr. Erdmann joins you.
Both witnesses are available for questions as a panel.
HEARING OFFICER ORTH: Thank you, Ms. Becker and Ms. Fox.
Commissioner Russell, do you have questions of Ms. Fox or Mr. Erdmann based on their Testimony?
COMMISSIONER RUSSELL: We're going to go.
HEARING OFFICER ORTH: Yes, and you do need to speak into the microphone.
COMMISSIONER RUSSELL: Yes, thank you.
Can I have a moment to review what I wrote?
HEARING OFFICER ORTH: Yes,

absolutely. Just pull the microphone a little closer to you, please.

COMMISSIONER RUSSELL: Okay. How is that?

HEARING OFFICER ORTH: Better.

COMMISSIONER RUSSELL: Okay.

EXAMINATION

BY COMMISSIONER RUSSELL:

Q. I wanted to ask about the Subregions, and I just wanted to understand a little better your development of the Regional Councils:

Will there be potentially a Subregional Council that will have a different membership than the Regional Council?

A. BY MR. ERDMANN: Yes, Commissioner, that's potentially the case, and to some extent that's going to be dependent on the specific request of that Subregion.

But yes, that is absolutely potentially the case that you could have a Subregion who is working

essentially as a Council, and then integrating their prioritized list with that larger group.

Q. Would the Subregion then have the same membership requirements that the Regional Council had showing that diverse interests were represented?

A. BY MR. ERDMANN: No.

The overall Region would have the full extent of that, but the Subregion could have more limited membership depending on how that Subregion works or how it's identified.

Q. Then it's my understanding that the Commission will approve the Council membership list. Will they also approve the Subregion list or membership, or the guiding party?

A. BY MR. ERDMANN: Commissioner, no, that's not the expectation. The expectation is that the list essentially can be managed inside the Regional Planning process by a given Region, and the role of the Commission is in terms of overseeing the overall

membership of that entire larger Council.

Does that answer your question or am I explaining that well?

Q. Yes. Thank you.

A. Forgive me for being nervous, but that helps me because I may have misunderstood the question a little bit. Thank you for that clarification.

In looking in Section 9 here, there is Commission approval required for the subdivision, or creating a subdivision for the Region, and then there is some criteria given for consideration, including 1 additional criteria in Number 6 that was added in there.

HEARING OFFICER ORTH: Keep it slow.

MR. ERDMANN: Of course.

Q. BY COMMISSIONER RUSSELL: In terms of the membership again you have 1 person each of the municipalities, so each of the municipalities would have its own representative. Is that

correct?

For instance, in Grant County, Bayard would have its own;

Deming; and,

Silver City would have its own.

A. BY MS. FOX: Yes, Commissioner. The intention is for all municipalities to be invited to be on the Council. Whether they choose to participate will be up to them, but they will be invited.

Q. Some counties have fewer municipalities than other counties. As I understand it, "municipality" means it's an incorporated community within the Council.

You know, I don't know that Catron County has any municipalities that fit that definition, but clearly there is a County seat, so would there be a means of accommodating Reserve, for instance?

A. BY MS. FOX: Also included as a Representative Member is each county, so the counties are listed as a

Representative Member as well.
Q. Yes, so each County would have it, but some of the counties would have fewer municipal representatives than other Councils. I just...
A. BY MS. FOX: That is correct.
Q. In terms of Sponsorship of, you know, the PPPs, does it have to be a Council Member that's the Sponsor?
A. BY MS. FOX: No, it does not. It is not required that a member of the Council be a Sponsor.
We intend for Sponsors of PPPs to be anyone really, but they have to be committed to following that PPP through.
Q. Could it be an NGO?
A. BY MS. FOX: It could be.
MS. BECKER: Commissioner Russell, with your permission I am instructing the witness to look at the Act and answer your question.
A. BY MR. ERDMANN: This comment doesn't specifically address your question about the NGO, but this

specifies that an entity shall not be made part of a proposal for planning funds without that entity's consent.

The expectation there is that we are not going to essentially decide that someone who is not in the room has to undertake a really onerous Project which may be assigned to them in their absence. That is the expectation there.

I think to answer your direct question about a Nongovernmental Organization, the real intent of the Sponsorship piece is to ensure that there is someone accountable to finish the Project. If a Nongovernmental Organization is able to provide that to adequate satisfaction, and also to the satisfaction of that Regional Planning Council, there is nothing that would prohibit them from being the Sponsor.

Q. Thank you.

I just have one other question, and this question has to do

with 14:

It says, under Paragraph A:

"Councils shall consider, with resources provided by NMISC Staff, the following information..."

Paragraph B, however, has no mention of support from NMISC Staff, and C doesn't either.

I am assuming that support will still be there, but since they are separate paragraphs, and this is just maybe kind of an editing issue to make clear that would be the case; that Staff would support A and B and C?

A. BY MR. ERDMANN: Commissioner, you're correct. It is not that Staff doesn't intend to support Sections B and C. We originally had it written that way because the pieces underneath A require a whole lot more Staff support, whereas the section under....

Well frankly, you're right. It should be higher up in the whole thing to frame that whole section, A,

B, and C, as receiving Staff support.

Q. I don't mean to criticize, I'm just making a small point on grammar, I guess. I don't know.

COMMISSIONER RUSSELL: Anyway, I appreciate all the work that you have put in here, I think it is quite comprehensive. The public outreach is extraordinary.

I think it's challenging sometimes to take language from an Act, and language that you get from public input and integrate it into a common system and I think you guys have done a really good job on this.

I may have some questions later that come up on some of the other issues, but those are my questions for now.

HEARING OFFICER ORTH: Thank you, Commissioner Russell.

Commissioner García, do you have questions?

COMMISSIONER GARCÍA: Can you hear me okay?

HEARING OFFICER ORTH: Yes, Commissioner.

COMMISSIONER GARCÍA: Thank you.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. First, thank you for your Testimony today, and thank you for all the work that you have put into this process.

I wanted to first ask, in looking at the Rule and cross-referencing that with the Statute, I wanted to ask how ISC Staff contemplates the Plans and the Council to define Public Welfare?

A. BY MR. ERDMANN: Commissioner, that's a big question. We have the Testimony of Mr. Chakeres, who is going to address the Public Welfare component of this. I can try and speak to it, but I cannot at the same level of detail that he is going to be presenting later today.

Q. Yes, I can hold my question for

Mr. Chakeres.

A. BY MR. ERDMANN: Okay.

Q. All right. Thank you.

I wanted to see if you can elaborate a little bit, but I appreciate that.

I feel Commission questions about Subregions is going to be really key:

In the Regions, 70% of public input was in favor of hydrologic Regions. I also think that when people think of a hydrologic Region, they may not be thinking about one-fourth of the State, and these are big. I anticipate that communities are going to immediately start thinking about how to define Subregions.

My first question is who approves the Subregions; is it the Regional Planning Council, or does that come to the Commission, and how official are they or how informal are they?

A. BY MS. FOX: Commissioner García,

as outlined in Section 9, the Commission will approve all Subregions, and they will consider the following items such that they are properly aligned, so that would be:

"the basis, hydrological or otherwise, for the Subregion and what circumstances make the proposed Subregion distinct from the Region;

"whether there is sufficient population and capacity within the proposed Subregion to engage in a transparent and inclusive planning process for the proposed Subregion;

"the impact of the proposed Subregion on the ability of the remainder of the Region to engage in a transparent and inclusive planning process;

"support from the

associated Council(s) for the proposed Subregion;

"the process for how the work of the proposed Subregion will be integrated with the Regional Water Security Plan(s) of associated Regions, including the prioritization of Projects, Programs, and Policies."

Also with the addition of Number 6, which was identified in our Testimony.

Q. Great. Thank you. I thought I came across that about Commission approval, but I kept looking back and forth and not exactly finding it, so I like that you read it out.

Another question I had was about data and "best available science..."

I notice in the Initial Planning Period, that's an ISC responsibility. I also noted it made reference to Exhibit 17, which is the

Water Use By Categories.

One thing I remember from the last iteration of Planning, and I think Andrew, you described the 2 rounds, the first round being '87, and another round in the 2000s, and that one was more community-driven and one was more top-down.

I was involved in both of those in my Region, and I had the opportunity to observe the pros and cons of the different approaches. How would you characterize this in that continuum of different approaches?

Do you see trying to strike a balance between community-driven and top-down?

Then I have a follow-up question about how that affects the data.

A. BY MR. ERDMANN: Yes, Commissioner García; thank you for that question:

I would characterize it, as I have done at this point many times at

our Open House meetings, as being an attempt to try to find a way to start in the middle. We have tried to reach out to people up front before the Rules were created such that we're not creating those in a top-down fashion, but also to have some rigid rules by which this is done, to ensure that the outcome meets the needs that are there for the State, but also the outcome is useful for the participants.

Q. As a follow-up question, I appreciate that thinking and your explanation.

In that regard, on the categories, I think the Round 2 Regional Water Planning used what was referred to then as a Common Technical Platform. I also remember being in a Staff meeting and making reference to this Categories Report, and it's basically water diversions.

Is this still a foundational piece or do you see there being a Common Technical Platform? What's the

role of their report, and what are some other examples of data that you anticipate making available to these Regional Councils?

A. BY MR. ERDMANN: Yeah. Commissioner, thank you for that question:

The Common Technical approach, as you mentioned, included an Administrative Water Supply which was a really critical component of that. It was an Agency-identified or determined process by which an Administrative Water Supply was determined, or sort of the "supply" side of a supply/demand balance.

For this round we the guiding data that we have is the Leap Ahead Report. We don't have Region-specific budgets for each, although we do, of course, still have the data from 2013 when that last round was developed.

What we do have is an expectation for having significantly less water in the future, along with

some other associated issues that we have described in some detail, and I'm going to avoid the difficult-to-spell word.

I think it's our intention that should be really the foundational kind of science with which we are approaching all this, and also simultaneously, of course, trying to get much more fine-grain data about flow and water use, of course, but also specifically about Groundwater to a much greater extent to incorporate into it.

We're moving away from using that 2013 Handbook not as an Agency-specified Administrative Water Supply, but something that the Regions can look at and develop based on their own needs.

Water supply is a lot different in an area that's exclusively using Groundwater, for example, than a place that has a mix of Groundwater and Surface Water. The guiding sort of science on that is the Leap Ahead

Report, with the expectation we will have less water moving forward.

HEARING OFFICER ORTH: Excuse me, Commissioner García; I'm sorry to interrupt:

We need a short stand-up break before Public Comment, which starts in less than 10 minutes.

Can you pick up your questioning after lunch?

COMMISSIONER GARCÍA: Absolutely.

HEARING OFFICER ORTH: Thank you so much.

Let's take a short break and we'll come back for Public Comment in about 8 minutes.

(The Evidentiary Hearing recessed from 11:54 a.m. to 12:01 p.m.)

HEARING OFFICER ORTH: Let's come back from the break, please.

We are coming back from a break. We are interrupting the case presentation and questioning by the Commissioners of the ISC Staff because this is the first of our publicly

noticed Public Comment periods.

I will call your name. I do know that there is 1 person online, who I think is Howard Hutchinson online, but I'm going to take the folks in the room first.

We have Anjali Bean. Anjali Bean.

MS. ANJALI BEAN: Hello.

HEARING OFFICER ORTH: I'll ask every person to state and spell both their first and last name for the transcript.

MS. ANJALI BEAN: Great. Thank you very much.

My name is Anjali Bean. That's A-N-J-A-L-I; Bean, B-E-A-N.

ANJALI BEAN,

after having been first called, was examined and testified as follows:

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PUBLIC COMMENT

BY MS. ANJALI BEAN: Good, I guess,

almost afternoon now, Commission. Thank you for the opportunity to provide Public Comment.

Again my name is Anjali Bean, and I am Senior Policy Advisor with Western Resource Advocates.

HEARING OFFICER ORTH: And you'll have to speak slowly.

MS. ANJALI BEAN: Sorry. I've heard that many times this morning.

Just as a bit of my background:

I have a Bachelor's in Environmental Policy, a Master's in Water Resources, and 15 years of experience in Water Management and the Policy world throughout the United States and the world.

Today I will be highlighting some key points that are reflected in a Public Comment letter which should be in the materials that you were provided that myself at WRA, as well as numerous other environmental nonprofit organizations submitted:

I do want to first acknowledge and thank the Interstate Stream Commission for reviewing that Comment letter and including some of the changes that we suggested in their Testimony that you have already heard today.

I do want to bring attention, however, to a concern that remains in the Proposed Rule as drafted, which, to our view, is a lack of clarity between and sometimes conflation of 2 issues:

First, the issue of Public Welfare; and,

Second, the needs of future generations.

The Water Security Planning Act provides some conflicting guidance on these 2 topics. Section C(1)(e) of the Act says:

> "The Commission shall promulgate rules that, at minimum, establish, among other things, the procedure for a water planning entity

to consider Public Welfare values and the needs for future generations."

HEARING OFFICER ORTH: Slow down.

THE WITNESS: Sorry.

This Subsection establishes that the 2 principles seem to be separate; there's Public Welfare and future generations of New Mexicans.

However, 5B(2) states:

"The outcomes sought by regional water entities shall consider Public Welfare balances, balancing water use and the needs of future generations of New Mexico."

This implies that they are in some way connected, or even that the need for balance and future generations in some way defines the concept of Public Welfare. I find this confusing, and in my view it has led to some confusion in the Rule as drafted.

Having read the lengthy and careful Testimony from Mr. Chakeres that you will hear later from the Office of the State Engineer, it seems to be the State's view that these are not connected because the term "future generations" is nowhere in that Testimony when discussing the State's view of Public Welfare.

My organization, Western Resource Advocates, was part of the group of organizations developing and advocating for the Water Security Planning Act in 2023. It was always our understanding, as part of that negotiation, that the term, the "... needs of future generations," was included to ensure that planning entities consider the long-term benefits and impacts of any proposed PPP, and how these PPPs would support the needs of our communities and environment into the future. In other words, the need to consider sustainability in the planning process.

It's hard for me to imagine a successful planning process that doesn't do this.

I want to remind the Commission again of the language in the Statute, which says that the Rule must establish a procedure for considering these topics. The Rule, as written, requires that the plans include documentation of consideration of these ideas, but not a procedure on how to do so.

I therefore recommend, as provided in our Comment letter on page 6, that Section 15A of the Rule, which is the section that sets criteria for approval of plans, be amended to separate these 2 concepts and provide clarity that they are, in fact, separate ideas.

Furthermore, we recommend that the section considering "the needs of future generations" be amended to also require the procedure for doing so through a thorough analysis of the

long-term sustainability and cumulative impacts of a proposed Project, including an estimate of how long any impacts or benefits achieved from the Project are expected to remain. This gets to that sustainability question when prioritizing PPPs.

I know this is a slightly lengthy edit, but I do think it is necessary to meet the intent of the Statute, and to make this Rule successful in the long term.

With that I will conclude my Comments.

The reference letter has additional Comments and potential changes that we recommended, and I'm happy to answer questions about the letter as a whole. I did want to highlight this particular Comment, as well as my agreement with the Testimony that I think you will hear, or the Public Comment that you will hear later today from Aidan Manning and New Mexico Wild. Thank you very much.

HEARING OFFICER ORTH: Thank you, Ms. Bean.

Instead of calling on every Commissioner, let me just ask if any Commissioner would indicate if they have a question of Ms. Bean.

Commissioner García.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you, Ms. Bean, and thank you for your Testimony.

As I was reviewing the Rule, I did have some questions about Public Welfare, and I will be asking those questions.

I was noticing that the Statute on page 6 of the Act does actually have "Public Welfare/future generations" together in the same phrase, and you also recommended that there be a procedure. Could you elaborate on that a little bit; the procedure for defining Public Welfare values and the documentation? Could

you elaborate on that from your Comments?

A. BY MS. ANJALI BEAN: Sure, absolutely.

As you identified the Statute does require -- it says the word "... procedure...," which, to me, states that there has to be a set of specific steps to take in order to ensure that you are considering these things.

I can read it again, but we did provide language in that Comment letter. If you would like to reference back, we did provide specific language of what we recommend that procedure to be.

I'm sure there are many ways that you can develop that procedure, but we recommended saying:

> "Council consideration of balancing water uses and the needs of future generations through an analysis of the long-term sustainability and cumulative impacts of a

proposed Project, including an estimate of how long any impact or benefits achieved from the Project are expected to remain."

That goes to looking at a PPP that might be critically important, it might be ready, but really thinking about does this PPP have an impact in the long term? Does it affect our water supply and water security today, or 10 years from now, or 20 years from now?

How long will any given PPP impact be seen both in terms of negative impacts that might have occurred, and positive impacts, so really getting into that sustainability.

Q. If I may follow up, Ms. Hearing Examiner, I am interested because in my first reading I had not really understood that Public Welfare would be a criteria ranked in PPP, but sort of the lens that I come at this concept of Public Welfare comes from the

statutory criterion on water transfers.

Could you offer any...

I'm thinking that your organization has concern about the importance of Public Welfare as it relates to that statutory criteria, and how that relates to Regional Water Planning.

A. BY MS. ANJALI BEAN: Thank you, Commissioner García. I am certainly not an expert in Public Welfare, but I am not sure that I can adequately answer your question.

I do think your confusion and your question around how the legal term of art "Public Welfare" is included in the prioritization process is important because I do see these 1 issues as separate. There is that legal question of what "Public Welfare" means and what it means to the State Engineer's Office, and what it means for permitting, and what it means for our Water Rights Administration in general, which is

critically important.

But considering the "needs of future generations," is a different idea and should not be entirely wrapped up into that critical legal discussion about what the term of art "Public Welfare" means.

COMMISSIONER GARCÍA: That's all I have. Thank you.

HEARING OFFICER ORTH: All right.

Other Commission questions.

No.

Commissioner Anderson.

VICE CHAIR TIMMONS: Sorry; I'm Commissioner Timmons.

HEARING OFFICER ORTH: Vice Chair Timmons.

EXAMINATION

BY VICE CHAIR TIMMONS:

Q. Anjali, I just have a question on the concept of sustainability and thinking about how some Regions might approach this:

Knowing that some places are facing maybe 5 or 10 years of water supply, how might their plan...

I can't quite wrap my head around how they would set up the steps of planning for future generations knowing what they perhaps already know.

Yes, it's hard to wrap your head around setting a Rule that says, "You shall do this," when there may not always be sustainable options for future generations unfortunately.

A. MS. ANJALI BEAN: Thank you, Commissioner Timmons, and I think that's a great question:

I think as our recommendation is written it doesn't say that you can't prioritize a PPP that doesn't secure water for the next 1,000 years or whatever is set, but I think people should go into these prioritization discussions with eyes wide open.

If you are requesting $50 million for some sort of hard

infrastructure Project that might be critically needed, and might end up being at the top of your priority list regardless, you should understand what the long-term impacts of that Project are even if that ends up being your top priority anyway.

Even if there are no priorities that really provide that long-term sustainability, I would hope that rises to the top of a plan and is reflected in the written report saying, "We worked really hard on this plan and we didn't identify any Projects that have long-term sustainable impacts on water resources." If we aren't requiring you to look at those from that lens, you might not come to that conclusion independently.

VICE CHAIR TIMMONS: Thank you.

HEARING OFFICER ORTH: Other Commissioner questions.

No.

Thank you very much, Ms. Bean.

COMMISSIONER SUINA: Madam

Hearing Officer, this is Commissioner Suina.

HEARING OFFICER ORTH: Yes, Commissioner Suina. Do you have a question of Ms. Bean?

COMMISSIONER SUINA: I do, if that's okay with you.

HEARING OFFICER ORTH: Yes, go ahead.

COMMISSIONER SUINA: Thank you very much for inviting me to Public Comment. I have a few questions:

EXAMINATION

BY COMMISSIONER SUINA:

Q. One, in the development and your in review of the existing Proposed Rule did you reach out or include any Tribal or Pueblo input of perspectives in some of your Comments, or in developing your Comments in the lens that you looked at this Rule?

A. BY MS. ANJALI BEAN: Thank you, Commissioner Suina:

Given the time allotted we

were not able to do extensive outreach ourselves. I will say that WRA does have a Tribal Engagement Manager, and she was reached out to by several Tribal representatives.

We did at least send our letter, as we were drafting it, to them, but given the time allowed we weren't able to do substantial outreach.

Q. Thank you for that response.

That goes into my follow-up question in terms of what you presented, and please correct me if I misheard:

The way your Comments were presented is that "Public Welfare" is separate of "... future generations." Is that correct?

A. BY MS. ANJALI BEAN: Yes.

Q. In terms of, like, kind of bifurcating if you will.

A. BY MS. ANJALI BEAN: Yes, I would say that "future generations" could be included within a "Public Welfare" definition, but it should not only be considered as part of Public

Welfare.

Q. Okay. With that, how would you, from your background in Policy, look at...

Here in New Mexico we're blessed to have a number of communities that have been here since time immemorial, and a thousand, including hundreds of years with some of the Acequia communities and Land Grant communities as a unique land-based culture and people that have lived here for generations, since time immemorial, with the intent of a lot of those Pueblos and Tribes and those communities, you know, having a core value of sustainability in the community as well as the entire State of New Mexico going forward into "future generations," again bringing that term back in.

In terms of like the Public Welfare for those communities and those ways of life to continue that are dependent upon water resources, say our

agricultural communities depending upon Surface Waters for irrigation, or our Pueblo communities depending on different water uses, since they have used the water since time immemorial again, and looking at integrating that perspective in what we call "Public Welfare." I guess, to me, I don't see it bifurcated I guess is what I'm trying to say.

Ow would you, with some of your perspectives, kind of resolve that I guess?

I don't think it should be bifurcated; can you understand that I guess, or can you see what I'm saying?

A. BY MS. ANJALI BEAN: Thank you, Commissioner Suina; I think I do.

I think where our concern came from was hearing from various stakeholders in the community about the complexities of using the term "Public Welfare," and that it's a critically important term that should be defined, and we should be

considering how to define it at the Regional level.

I support it being in this Rule, but in considering sustainability only from that legal term of art perspective and getting bogged down in the potential legal implications from a permitting perspective of what the term "Public Welfare" means in our legal and administrative Water Rights system was limiting.

In my Comments I would hope, and it was never our intent, I should say, to imply that the needs of future generations should not be included in a community's definition of "Public Welfare." In fact I don't know how you would define that without thinking about sustainability, but it should not be the only way that term and that concept are considered.

Does that help explain? I'm not sure I answered your question.

Q. Yes, thank you so much. I appreciate your answer.

COMMISSIONER SUINA: Madam Hearing Officer, that's all I have for now.

HEARING OFFICER ORTH: Thank you, Commissioner Suina.

Ms. Becker, the only questions we are allowing, really, are from the Commissioners.

MS. BECKER: Thank you, Madam Hearing Officer; I don't have a question. I want to aid identifying where the Comment is in the records if they wanted to follow along with the Rule change. That IS in contained in the filing of Public Exhibits, and it's Bates-stamped. Their Comment begins at 01787.

HEARING OFFICER ORTH: Thank you very much for that.

Thank you, Ms. Bean.

Let's do a few shorter ones,

Teresa Seamster; are you in the room?

If you would spell your first and last name.

MS. TERESA SEAMSTER: I certainly will.

My name is Teresa Seamster. The first name is T-E-R-E-S-A; last name S-E-A-M-S-T-E-R.

HEARING OFFICER ORTH: Thank you. Just keep it slow.

MS. TERESA SEAMSTER: I will.

TERESA SEAMSTER,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. TERESA SEAMSTER: First of all I'm the national Water Sentinels Representative of the Rio Grande Chapter of Sierra Club. I have been responsible for water testing on the upper Pecos River for the last 6 years. We collaborate with Mecos Gavez [phonetic] and with the Upper Pecos Watershed Association.

I'm just waiting a minute so the lab report can go around to all of

you.

Okay. The lab report that you have just been handed is the Pecos Water PFAS Assessments that was prepared by Eurofins Environmental Testing earlier this month.

I just want to note that the Commission Chair is the only one who is getting the full report, and for the sake of brevity I just copied the client report results for the rest of the Commissioners; all right?

The reason for doing this report and the reason for coming here today is just to highlight some of the local and community concerns, and some of the escalating concerns about possible PFAS contamination in the Upper Pecos.

As you know the Pecos River is our second largest and longest river. It affects the entire eastern part of the State. Our concerns are local regarding really a segment of the headwaters. It is about a 14-mile

segment from the Old Tererro Mine down to the town of Pecos. That's the area where we conduct our water testing.

Just for a little background, the Sierra Club funds the Water Sentinels program, which is a national program. There are 60 different groups in all 50 states that volunteer their time to test the waters in their communities and report them to their local Environment Departments for their states.

The local concerns regarding potential PFAS contamination in the Upper Pecos have been heightened because of the recent Administration's fast-track announcement about allowing mining Permits in the National Forest.

There is a proposed Exploratory Drilling Permit for Comexico, L.L.C., an Australian mining company. They would like to start development of a mine on Jones Hill, which is in the Upper Pecos Watershed. This is what prompted us to do our

first baseline testing for PFAS.

I'm not sure if anyone here has expert knowledge about PFAS, but like the oil and gas industry, the mining industry depends heavily on PFAS-derived products for all of their drilling operations.

What you have in front of you is good news. As far as we can tell the PFAS results show no detection of the very large panel of contaminants that they looked for or tested for. I'm not a hydrologist or a microbiologist, but the results are based on what they call the 1635 EPA test for PFAS.

HEARING OFFICER ORTH: Thank you.

MS. TERESA SEAMSTER: Thank you.

We would have given you the results sooner, but we just got them last week.

HEARING OFFICER ORTH: Thank you.

Hold on one minute.

Are there any Commissioners with questions of Ms. Seamster?

No. Thank you very much.

Mr. Bustos, hello. If you would spell your first and last name and give us your affiliation.

MR. DON BUSTOS: Sure. My name is Don Bustos; D-O-N B-U-S-T-O-S. I want to thank you folks for allowing me to present here.

DON BUSTOS,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. DON BUSTOS: So my name is Don Bustos, and I'll give you a little bit of background:

I own a small farm in Northern New Mexico called Santa Cruz Farm. We named it after our Church and we named it after our Land Grant, which has been in existence since 1695.

I'm here to make sure that we, as small Farmers, are allowed and participate and get a voice in this

process. A lot of times Northern New Mexicans and small farmers in these small rural communities aren't engaged in a way that allows them to really participate in a really meaningful way.

We would really like for the Acequia associations to be included in this plan, and then give them, the farmers and the ranchers, the resources that allow them to participate.

As a volunteer, I volunteer on the Secretary. I've been a Mayordomo; I've been a Commissioner. I am a person of the Rio Quemado, Rio Frijoles, Rio en Medio and Santa Cruz Stream System Association.

The Santa Cruz Stream Association is a regional association that's working on Adjudication processes. Out of that we have developed the Santa Cruz Watershed Group. All of this is on a volunteer basis, and it's really hard for us to be able to participate if we don't have the financial and technical

resources that allows us to really be able to articulate what our needs are, and then follow through on a process that allows us to see results that are going to impact us today, but for future generations also.

I really want to emphasize again the inclusion of Acequias in this process, in order to be allowed to have a seat at the table and to have the financial resources and the technical assistance that allows us to be a viable and engaging partner in these processes, and then being able to map it out in a way that really makes sense to the Regions and the farming in Northern New Mexico.

It doesn't do any good to create Regions that aren't allied with financial institutions that support the efforts of these Acequias and regional associations. That's my Testimony.

HEARING OFFICER ORTH: Okay. Thank you, Mr. Bustos. I have enjoyed your vegetables.

Are there any Commission questions?

Commissioner García.

COMMISSIONER GARCÍA: Thank you.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you, Mr. Bustos, for being here today. We really appreciate your Testimony.

I have a quick question for you:

Can you give examples of technical data that you think would be helpful to farmers and ranchers and Acequias and stockmen that would help them more effectively participate?

A. MR. DON BUSTOS: There are, and thank you for the question, Commissioner García:

I think there are several. One is directly affecting the Acequias themselves, especially through these kind of climate variations that we're having now, which is that we are having

to really understand the hydrology of the Acequias and try to figure out how to minimalize the impact from these floods.

It would be helpful to have some kind of a system in place that would allow us to kind of start to figure out where these weaknesses are in the Acequia systems themselves and start to address them, because if we can look at them now, or fix them now, and be proactive instead of reactive, it would be effective in the process.

The other one where we need technical assistance is kind of in the watershed and Settlement areas because of the hydrology and all the areas that are needed to develop these kinds of processes and models that are there. We need that kind of support to identify projects in the watershed that are going to have the biggest impact to be able to have water to be able to share with the rest of our communities.

You know, I don't know if I answered that question correctly, but, you know, being a layperson it is hard to kind of interpret what engineers really want, or what they need in their language. But, you know, we need the assistance to be able to make the argument that if we are putting rock dams up in the watershed, how effective are they to really make an impact to the lower watershed and back down to the Rio Grande.

We have anecdotal and historical or instinctual knowledge of procedures that we have seen working for centuries, but how do you make that into a language that people can understand and then able to interpret for future use?

COMMISSIONER GARCÍA: Thank you very much.

HEARING OFFICER ORTH: Yes, Commissioner Russell.

COMMISSIONER RUSSELL: My question was basically answered in

that, but I have a Comment. Is that appropriate, or just questions only?

HEARING OFFICER ORTH: At this point it's questions, sorry. At this point it's questions, other than to thank --

COMMISSIONER RUSSELL: I'm satisfied then. Thank you.

HEARING OFFICER ORTH: All right. Thank you.

Other Commissioners.

Oh, yes, sir; Commissioner Chávez.

EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. Mr. Bustos, you say you have the Santa Cruz Farm.

A. MR. DON BUSTOS: Yes.

Q. What type of crops do you raise?

A. MR. DON BUSTOS: Thank you for that question; I'll give you an idea:

We grow 72 different varieties of produce 12 months a year using nothing but solar energy. It's really

important that the water is able to be managed and we are able to use it in a way that allows us to make enough money and economic impact to pay our bills and to pay our taxes, and become good members in the community itself.

I also grew a lot of good blue corn this year, an we have our traditional green chilies. I have a mix of traditional crops, and then new crops that are more marketable and more profitable.

Q. You also mentioned solar. How does that work?

A. MR. DON BUSTOS: We grow in the middle of the winter using nothing but solar energy, so it's really important to have that watershed really healthy and have the Acequias running 12 months a year.

And yes, I'm growing, too, by solar energy salad greens in the middle of the winter, such as our radishes, harvest radishes, spinach, and kale.

It is a passive solar system that we use, and it has really developed or was really worked on a lot with New Mexico State University and what they have done around season extension.

We have what we call an igloo effect. We have a plastic cover over the top to trap the warm air. We have another polyester woven top beneath that which traps the water beneath the soil. Then you have 2 layers of ice, and then that warm air is trapped underneath that layer of ice. It is like an igloo such that it doesn't take a lot of heat to have these plants survive throughout the winter.

We have been doing it for close to 20 years. We have been supplying the Santa Fe Public School District and other school districts across New Mexico.

COMMISSIONER CHAVEZ: Thank you.

HEARING OFFICER ORTH: Thank you.

Other Commission questions.

No.

Thank you very much.

Now we have Mr. Montoya.

Hello. Spell your first and last name and state your affiliation.

MR. RUDY MONTOYA: My name is Rudy Montoya; R-U-D-Y M-O-N-T-O-Y-A. I'm with the New Mexico Acequia Association.

RUDY MONTOYA,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. RUDY MONTOYA: Thank you for letting me speak here today. My Comments are actually meant to complement those of my colleague, Monica Rodriguez, who is going to be soon joining.

I'm with the New Mexico Acequia Association. We've handed in a copy of our Written Comments that were turned in prior to the September

27 deadline.

We generally support the Proposed Rule for the Water Security Planning Act, but the Rules need to include a few things in order to have Acequia and rural voices heard.

Some of the things that I kind of want to point out that Monica can elaborate on includes the need for the language to create the Acequia and Rural Water Security Advisory Working Group. This group will be a statewide forum that will provide input to ensure that rural Water Rights and rural water needs, and viewpoints are considered and incorporated into the Region's plan and related activities.

We also want to make sure that the Rule needs to have the 9 ISC Planning Regions overlap or be contained within the Council of government Regions. This will improve the capacity available for implementing the plans.

I also want to note that

throughout the Rules we need more language that allows the public more opportunities for community engagement, input, and chances to participate.

HEARING OFFICER ORTH: Thank you very much, Mr. Montoya.

Are there Commission questions?

Commissioner Suina has joined us in person; welcome, Commissioner Suina.

Thank you very much, Mr. Montoya.

Ms. Rodriguez, would you like to go next?

MS. MONICA RODRIGUEZ: Good afternoon. My name is Monica Rodriguez; M-O-N-I-C-A R-O-D-R-I-G-U-E-Z.

MONICA RODRIGUEZ,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. MONICA RODRIGUEZ: My family has

farmed and ranched both in the Española Valley and in the San Joaquin Rio de Chama Land Grant for generations. We continue to do so to this day. I also work for the New Mexico Acequia Association as their Community Outreach Coordinator, and I sit on the New Mexico Land Grant Council as a Councilor.

As my colleague Rudy mentioned we did submit our Written Comments before the deadline of September 27, and we have provided them here for you today for your reference.

As he said we generally support the Rule, but we think it is really important to include the voices of rural communities such that their interests and their concerns are included in the Rules. He highlighted that the Rules should include language to create an Acequia and Rural Water Security Working Group. I think this is going to be the foundation for including those voices in the Rule

process, so that Land Grants, Mercedes, and Mutual Domestics can be involved in this process.

This will be a statewide forum that will provide input to ensure that the rural Water Rights, water needs, concerns, viewpoints, and traditional knowledge is considered and incorporated into the Region's plans and into their related activities.

We also want to highlight that the Rules should also include the 9 ISC Planning Regions overlapping onto the Council of Governments. These Regions are already created, and they provide technical support and free Grant writing, planning, and project implementation services that Acequias lack as volunteers, as well as Land Grants. This will also improve and strengthen the available capacity to implement the plans.

We are also suggesting that the Water Security Planning Act in Section 4, Subsection A, which states:

"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, and that the Commission may make Grants or loans of funds for the purpose of Regional Water Planning as possible, using appropriations made for that purpose."

Such a fund or program is not mentioned in the Rules, and needs to be further defined in the Rules. Please see our Comment related to this on page 2 of our Written Comments.

We would also like to ask that the Rules should include throughout opportunities for the public to engage with the process, give their input, and chances for them to participate.

Then lastly we support including 1 member from a Mutual

Domestic Water Consumers Association and a Community Regional Water System in the Region as a Representative member, as stated in the Rule, in accordance with the Regional Water System Resiliency Act.

Thank you for your time, Madam Hearing Officer and Commissioners. I stand for any questions.

HEARING OFFICER ORTH: Thank you, Ms. Rodriguez.

Are there Commission questions?

Commissioner Chávez.

EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. Thank you for your Comments, Ms. Rodriguez, and I have a quick question:

You had a list of entities that you want to be in your Advisory Work Group. Have you guys considered Community Ditches?

Not every area in the State

of New Mexico has Acequias. I come from the Four Corners area, and there are some Acequias, but there are some Community Ditches. Have you guys considered including that language?

A. BY MS. MONICA RODRIGUEZ: I guess I'm not a legal scholar and I don't want to go down that road, but as far as the support that NMAA offers, we include Community Ditches in our support.

We try to advise from the perspective of the Acequia, but I don't know that we include that because of maybe the legal definition of "Ditches" versus "Acequias."

Acequias, as you know, have Political Subdivision status and are local governments.

COMMISSIONER CHAVEZ: Thank you.

HEARING OFFICER ORTH: Other Commission questions.

Thank you very much, Ms. Rodriguez.

Pam Roy.

Give us tell your first and last name, and give us your affiliation, please.

MS. PAMELA ROY: My name is Pamela Roy. My name is spelled P-A-M-E-L-A; last name R-O-Y.

PAMELA ROY,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. PAMELA ROY: I am here representing Farm to Table, a nonprofit based here in Santa Fe and statewide, as well as the New Mexico Food and Agricultural Policy Council, which is a Program on Farm to Table. I want to thank you all very much for this opportunity to provide our water statement.

I want to say also that we really appreciate the work that you all have been doing, and this opportunity to make a public statement from the

New Mexico Agricultural Policy Council.

We would like to put into submission, which we have in the past as well, and I want to say we really appreciate your efforts to protect our Acequias, our land, our water, the stewardship of those, and I just want to provide into the record our Policy Statement.

HEARING OFFICER ORTH: Actually it's not necessary to read it, it's already part of the record now.

MS. PAMELA ROY: Perfect.

HEARING OFFICER ORTH: If you would like to --

MS. PAMELA ROY: Thank you.

I think the most important thing for us to share that with you all, and for your continued consideration.

We really hold water as the most important thing that we can do for our land and the future of our food, our food production, whether it be our farmers or our ranchers, and those

provided by the State.

New Mexico's food has really increased through a very broad coalition of agencies and organizations working together. We have expanded the growth of New Mexico food that's grown and raised here in New Mexico that go to places like:

Schools;

Senior centers;

Early daycare centers;

Nutritional programs;

WIC's Farmers Market Nutritional Programs.

There is this comprehensive approach to this work. The way we are able to get there is because we are able to protect the primary work of our farmers and ranchers, and those who are supplying the food, many of whom care very much, or all of whom care very much about water resources and their ability to use them efficiently and economically and in alignment with, of course, the regulations that

they have to adhere to.

Two things we want to make sure of is that any water that might be produced water in this part of the State, or reclaimed water in this State is not necessarily water that is actually utilized for agricultural and food production. Our goal is that we are able to keep water in our waterways available, like our Acequias, waterways like the Pecos, those natural waterways that provide water to our farms and ranches to deliver the food our producers grow.

We are concerned, though, that if any suggestion of produced water, such as that which comes from things like the oil and gas industry, that it stays in that sector if it is reclaimed, and it is not put in the ground for the production of food in this State.

With that, I stand for questions.

HEARING OFFICER ORTH: Thank you,

Ms. Roy.

Commissioner questions.

No.

Thank you very much.

Aidan Manning.

Spell your first and last name, and give us your affiliation.

DR. AIDAN MANNING: Yeah, good afternoon. My name is Aidan Manning. That's A-I-D-A-N M-A-N-N-I-N-G. I am the Rivers and Waters Program Associate at New Mexico Wild. I also have a Ph.D. in Watershed Hydrology.

AIDAN MANNING, PH.D.,
after having been first called,
was examined and testified as follows:

PUBLIC COMMENT

BY DR. AIDAN MANNING: For decades New Mexico Wild has advocated for the lands, wildlife, and water of the Land of Enchantment. We represent thousands of members across the State. We submitted Written Comments on the Proposed Rule

in conjunction with several other environmental conservation nonprofits.

I would like to thank ISC Staff for their extensive outreach efforts, and for reading and incorporating several of our suggestions in that letter, and for their dedicated work on the challenging task of establishing a robust and effective Rulemaking for the Regional Water Planning process in New Mexico.

I am speaking today in favor of approving the Proposed Rule contingent on several changes which we believe are important for establishing a consistent baseline of effective planning in a State with very complex water challenges that are going to vary from Region to Region.

We support the changes that are recommended by ISC Staff in their respective Testimonies. We also urge you to make a few additional changes as set forth in our previously submitted Comments.

The first of those Comments that I would like to note do relate to some conversations earlier today around the prioritization of Programs, Policies, and Projects.

We believe as written, the current Proposed Rule is a little confusing in that it does not clarify that those PPPs should be ranked based on the rubric or needs of the Region itself, and then bend into these Readiness categories. We think, as written currently, it could be confused by certain Regions as saying Readiness is the only factor in prioritization. That's just one concern we wanted to flag.

Other than that today, I would like to emphasize our recommended changes that involve requiring Councils to consider or document certain aspects and impacts of their plans instead of allowing for some of these considerations to be optional, as they are in the current Proposed Rule.

These changes would not impose a specific process for Councils to consider or document these aspects of their plans, just ensure that those considerations are somehow shown in the plans, so that those plans are as well-informed as possible and so that local stakeholders and decision-makers can understand the real impacts, costs, and benefits of these potential PPPs.

The first of these suggestions specifically is in Section 14 of the Proposed Rule:

"Considerations For Councils During Planning Processes."

Subsection A of Section 14 states that Councils shall consider a list of topics that are specifically laid out in the WSPA. In contrast, Subsection B allows, but does not require, Councils to consider a list of additional topics.

Just to highlight those, those include:

"Councils may consider the following information for inclusion in any Regional Water Security Plan:

"best available resources or methodologies for considering the needs of rural and urban populations and places within the Region;

"Groundwater management strategies and needs;

"Regional food security and agricultural sustainability; and,

"water needs for healthy upland and riparian habitats."

We recommend that the "... may consider..." in the beginning of Subsection B be replaced with "... shall consider...," such that Councils are required to at least consider these crucially important topics.

The ISC might also, if they choose, consider adding a qualifier allowing Councils to document when

insufficient data might prevent consideration of topics listed in Subsection B pertinent to Ms. Fox's note about, "We don't want the limitation of data to prevent good planning."

Similarly, in Section 15, "Criteria For Approval," we strongly recommend the Rule be changed to require rather than allow Councils to document in their plans several key considerations for each proposed Project, Program, or Policy. You can read those listed for the PPPs that are existing:

Potential funding ability to enhance regional water resilience;

Presence of multiple benefits;

Substantial support from multiple stakeholders;

Identification of potential PPPs.

That's a bit of a summary of those, and those are all generally positive attributes of proposed PPPs.

While those positive attributes are important, there is currently no requirement in the Rule that Councils document or otherwise provide evidence of their consideration of PPPs' potential negative impacts.

We therefore recommend adding an item to that aforementioned list in Subsection C(5), such that Councils are required to document their consideration of any negative impacts a PPP might have on:

Socioeconomic systems;

The environment; and,

Cultural values.

Alternatively that list could discuss:

Public Welfare;

Existing water uses; and,

The needs of future generations of New Mexicans.

In summary we strongly suggest the Rule be changed in certain key places to make critical considerations required whether for a Council's

overall planning process, or for individual PPPs. We do not believe the ISC can fulfill the mandates of the WSPA if any of these Regional Planning Councils choose to ignore those considerations, which are optional in the current language.

Things like food security, Groundwater impacts, rural communities, and, in general, clear realistic communication of Project impacts, positive or negative, cannot be optional, especially if these plans are to serve as a vehicle connecting local stakeholders to State guidance and State funds for many years to come.

The ISC has the authority and the duty to ensure these Rules will help fulfill the purpose and the intent of the WSPA. The Act expressly authorizes the ISC to adopt rules that lists criteria for Regional Plans with prioritized PPPs. Its language does not limit the Rule's requirements to those items listed in the Act itself.

The Act builds on the ISC's enabling Statute, which itself authorizes the Agency to:

> "... investigate water supply to develop, conserve, and protect; and,
>
> "to do any and all other things necessary to protect, conserve, and develop the waters and stream systems of the State."

As stated in our submitted letter, this enabling Legislation gives the ISC broad authority to set rules and guide Regional Water Planning Councils through a thorough and effective planning process, including requiring Councils to consider important topics and impacts in their planning process. Requiring mere consideration of critical information and impacts of PPPs we do not believe unduly burdens Regional Planning Councils and will better fulfill the purpose of the Water Security Planning

Act.

This Regional Water Planning process is an incredible opportunity to build stronger connections between the ISC's technical experience, between place-based regional water expertise and decision-makers and funding sources at the State level. Implementation of the Act can do a lot of good, but as others have stated before in multiple rounds of commenting, it has to be done correctly.

Many of the entities invited to participate in these planning Councils, while absolute experts of their own water systems, are limited in their capacity, their time, and their resources.

We all know that New Mexico is in a water crisis, and in a crisis optional considerations, however important, can sometimes fall by the wayside because they are optional. The State needs to establish in this Rule a baseline of what good planning

entails, and then support Councils to meet that required baseline in whatever manner best fits the specifics of that Region. We believe the changes suggested here are necessary to meet that need, and that the waters and water users of New Mexico would be better for it.

Thank you for your time and for your consideration, and an opportunity to comment today.

HEARING OFFICER ORTH: Thank you, Mr. Manning.

Commissioner questions.

Commission García.

COMMISSIONER GARCÍA: Thank you, Mr. Manning, for your Testimony today.

HEARING OFFICER ORTH: Just a note for the record, that's Dr. Manning.

COMMISSIONER GARCÍA: Thank you for that clarification.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. You said on the prioritization

of PPPs, you made a reference to it being based on need and not just Readiness. I was seeing in Section 15 of the Rule under C(1), the prioritized list included:

"Each plan shall be based on Readiness of each PPP."

Are you suggesting that we add "need" to that sentence?

I don't have your letter in front of me, but what's your recommendation for how we integrate "need" as a criteria for ranking.

A. BY DR. AIDAN MANNING: Our recommendation is that the process of prioritization be left to the Council because we think that is one of those things that is going to really depend from Region to Region. We believe that within the Guidelines that are laid out in other parts of the Rule for some of these required considerations, that the process of prioritization be left to that Region.

If they decide to make a

rubric that includes needs, sustainability, numbers of people assisted, those kinds of features, they have the option to do that. Once they have done that prioritization they can sort those priorities, or the individual PPPs into those buckets, as I think Ms. Fox referred them to.

If I understand correctly the Testimony from earlier today, I think that is the contention of the Rule as written in that this Readiness is just an organizer and not the only qualifier for whether something is high priority. If it's not, then I would strongly urge you to consider changing that.

Q. It sounds like what you're suggesting is that it should be more explicit.

A. BY DR. AIDAN MANNING: It should be explicitly stated such that there is no confusion that the prioritization is up to the Region, and then those PPPs are just sorted into Readiness groups.

COMMISSIONER GARCÍA: I

appreciate that. Thank you.

HEARING OFFICER ORTH: Other Commission questions.

No.

Thank you very much, Dr. Manning.

DR. AIDAN MANNING: Thank you.

HEARING OFFICER ORTH: We have time for just a few more Commenters in the room.

I see a request from Bill King and Jeff Suina, and I have not forgotten Howard Hutchinson on the platform.

Mr. King, would you spell your first and last name, and give us your affiliation.

MR. BILL KING: My name is Bill King; B-I-L-L K-I-N-G. I am here representing myself today.

WILLIAM KING,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. BILL KING: I feel I'm kind of in the minority because I'm a larger farmer; okay?

Paula has done a great job with the Acequias and the Tribes and everybody that are here, but we don't seem to be very organized on the larger Water Right farmers, although we use water.

My recommendation to the Board is that I would like to see you put a Water Right farmer and rancher on the Boards for certain, instead of being down in the class with a bunch of other people where you could appoint one, but not appoint one, because I think they would make suggestions and have facts that people could use to save more water than a lot of people that you're putting on from agencies and cities and these kind of things.

You need some input from the people that are actually using water for certain, so I would like for you

to put the farmer and rancher on the Board for certain in the planning Board.

I live in the Estancia Basin. We don't have a river, we don't have an Acequia, but we have a Land Grant. We wouldn't have agricultural people unless you put a Representative as a farmer or rancher on there for certain.

That's my short thing, and you guys have been very patient this morning. Thank you.

HEARING OFFICER ORTH: Thank you.

Commissioner questions of Mr. King.

All right. Thank you very much.

Is this Lieutenant Governor Suina?

COMMISSIONER SUINA:

HEARING OFFICER ORTH: Thank you very much.

Anyone else in the room before I turn to the platform for one Comment?

MS. MARY TRUJILLO MASCAREÑAS: Do I go to the front?
HEARING OFFICER ORTH: Yes, ma'am.
MS. MARY TRUJILLO MASCAREÑAS: I am sorry; I've been traveling. It's hard to do everything I have to do.
HEARING OFFICER ORTH: If you would spell your first and last name, please.
MS. MARY TRUJILLO MASCAREÑAS: It is Mary, M-A-R-Y; Trujillo, T-R-U-J-I-L-L-O; Mascareñas, M-A-S-C-A-R-E-N-A-S.
When I got married, I said I will not leave my name, I will just add another one.

MARY TRUJILLO MASCAREÑAS,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

MS. MARY TRUJILLO MASCAREÑAS: Anyway, I am here as a member of two Land Grants in our area, the Santa Barbara

and the Las Trampas Land Grants.

HEARING OFFICER ORTH: Would you spell those, please.

DR. AIDAN MANNING: Santa Barbara; S-A-N-T-A B-A-R-B-A-R-A, "Barbara" or "Barbara." Las Trampas is L-A-S T-R-A-M-P-A-S, Land Grant or Mercedes, which is Land Grant is English; Mercedes is Spanish.

I am also the Chairperson of the New Mexico Acequia Commission. I come from a little town in Taos County, and the reason I'm here is I want to endorse the Comments made by Rudy Montoya and Monica Rodriguez. They spelled out a lot of issues that we have in the Acequias and water, and I want to support them.

I am a rancher. We raise cattle and horses and hay and alfalfa and food.

I also grew up on a small ranch. I grew up on my father's legs trying to learn and do what he was doing. Of course I couldn't keep up

with him, but I did learn a lot, and that's why I'm here.

I think it's important to come up and help others that are leading us on the way, and that's the reason I'm here today, so that we can keep on asking for rights that our ancestors have used in the past of clean waters. We are now thinking of other kinds, of adding to the water, or letting water be used for things that might not be too helpful for us.

This is my first time I have attended any such hearings, so I'm sorry, I should have addressed the Chairman and the Commission. I am addressing you now so I don't forget.

But that's the way that we work. We work together for the Acequias and a reason to keep running. We want clear water that comes from the mountains, runs down to the Acequias. We benefit, and many people still drink from the Acequias; drink the water. Many people raise crops

and animals. We have animals, cows, horses, that depend on having clean water.

We have to mention that it is important for you people who are up there to protect our waters and don't let other things interfere with clean water for the drinking of our people, because we don't want to continue to get sick because of the kind of water that is being brought on by possibly some industry side or whatever.

I don't know much about exactly what happens, but I do know that we in the mountain areas drink clean water. We irrigate with clean water, and that's what we expect to have in our future, clean water.

Thank you very much and God bless you.

HEARING OFFICER ORTH: Thank you very much.

Commission questions.

No.

All right. Thank you very

much.

Let's go to the platform then.

Thank you, Mr. Hutchinson. Are you still with us on the platform? You should be getting a prompt to unmute yourself.

Howard.

You have allowed him to unmute himself?

All right. Well if you see him come back on the platform I'll take him when we see him.

We need a lunch break, and it's 1:04. Let's come back at 2:00.

MR. HOWARD HUTCHINSON: Madam Hearing Officer.

HEARING OFFICER ORTH: Is that you, Mr. Hutchinson?

MR. HOWARD HUTCHINSON: Yes; I didn't get the signal to unmute, so...

HEARING OFFICER ORTH: Okay. Terrific. If you would spell your first and last name, and give us your affiliation and then make your

statement.

MR. HOWARD HUTCHINSON: Yes. Madam Hearing Officer, Commissioners:

My name is Howard Hutchinson; H-O-W-A-R-D H-U-T-C-H-I-N-S-O-N. I am Chairman of the San Francisco Soil and Water Conservation District and we submitted Written Comments.

HOWARD HUTCHINSON,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. HOWARD HUTCHINSON: I've listened to the Staff Testimony this morning and I haven't been very comforted in listening to the Testimony. It doesn't seem like our Comments, our Written Comments that were submitted, and Comments that we have provided over the time that we had our public meetings and roundtables around the State have been accepted.

The creation of Regional Water

Plans and PPPs seems to completely ignore the prior Appropriation Doctrine.

Adjudication is the method New Mexico uses for water planning. In other words, it's who owns the right to divert and apply water to Beneficial Use and in what priority? The planning for that water is reserved to the owner, and the public has an opportunity to participate when there are proposals to transfer ownership, or application for a Point of Diversion, or use. The primary issue considered is the potential for impairment of Senior Water Rights.

Conservation and Public Welfare should only be considered within the context of impairment; to do otherwise would be contrary to the State Constitution; in other words planning for someone else's water.

In our Written Comments we cited seven critical problems with the determination of Public Welfare. Connected to these issues we are

concerned that our long-range plans and projects that require State funding based on approved Regional Water Plans will not get adequate priority in a Regional Plan.

That's kind of a summary of what our Written Comments stated, and I think we need to focus on Regions or subregions that are hydrologically connected.

As John Wesley Powell so wisely put forward when he explored the Colorado basin, we should be making sure that we make our divisions and our Political Subdivisions based on basins. We should be doing that in the State of New Mexico; so far we haven't seemed to be able to do that.

Thank you very much for your time.

Thank you, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you, Mr. Hutchinson.

Are there Commissioner

questions of Mr. Hutchinson?

No.

All right. Thank you very much.

Again, let's break for lunch until 2:00 o'clock. Thank you.

(The Evidentiary Hearing recessed from 1:08 p.m. to 2:01 p.m.)

HEARING OFFICER ORTH: Let's come back from the lunch break, please.

We're going to do a quick sound check.

Quick sound check. How are things?

THE CERTIFIED REPORTER: Good, Judge.

HEARING OFFICER ORTH: All right. When we broke for lunch Commissioner García was in the middle of her questioning of the Staff panel.

Commissioner García, did you have more questions of Ms. Fox or Mr. Erdmann?

COMMISSIONER GARCÍA: Yeah, I just have a few, and I think I did not

finish my questions about data.

Welcome back from lunch, everybody. I'm trying to remember my train of thought.

EXAMINATION CONTINUED

BY COMMISSIONER GARCÍA:

Q. On the Administrative Water Supply are you using that same concept now in the new round of water planning?

In other words what kind of data sets are going to be available to communities and Regional Water Councils?

A. BY MR. ERDMANN: Yeah, thank you.

No, we're not necessarily going to be using the Administrative Water Supply. That information is still available and the methodology is really clear from the 2013, so it can be used.

There was a pretty mixed reception for that particular approach following the 2016 and '17 round of

plans with the steps out there, but that strategy or methodology is out there and we could apply it again if that was something that seemed helpful for a Region, but it's not going to be required.

In terms of the data that is going to be out there, there is the stuff that we basically discussed. There is the Leap Ahead Report with the data that it's got. There is the support coming late that's coming out from the data initiative, and there are numerous models that are extremely local-specific around the State at different places that will also be available.

Q. Okay. I think that answers my question. I was trying to understand how much autonomy a Regional Council has in using the data set that best fits their needs in that Region. The critique I had of the Administrative Water Supply -- I forget what you called it in Exhibit 17 -- is the

categories. It's just that it doesn't tell you how much water there is, it just tells you how much water is being diverted.

I think it tends to oversimplify the response to the data in terms of the way that it's structured, so I think you've answered my question about that.

I had another question about the PPP and the process for selecting Projects:

I think there was some discussion from one of the Commenters, but I wanted to ask you if you wanted to review that again with us and elaborate on what is the process for prioritization because I might be missing something.

What I read in the Proposed Rule, it looks like Readiness is the primary criteria, but I would like to just understand that better, if you could share how those PPPs are prioritized.

A. BY MS. FOX: Okay. I think I will try my best to describe what we are thinking, but I wish we had maybe just made a Template about how we envisioned these kind of coming together.

How prioritization works is going to be left up to the Councils, so we are not stating how things are prioritized between PPPs. What we are stating is that we intend every Council to have 3, essentially, like sub-lists. Within each sub-list they are prioritized within the sub-list.

If you think about it, it is like 3 columns; 1 column with ideas, so PPP-1, PPP-2, PPP-3.

Then there is a second column is the scoping stage; PPP-1, PPP-2, and PPP-3. Those are ordered in their sub-list.

The third is the ready to proceed stage, 1, 2, 3 down the way.

There is not like a prioritization between the Readiness,

but just within each Readiness stage. Does that make sense?

Q. It makes a little bit of sense but leads me to another question:

How often will plans be revised in that list? Because that's going to be constantly shifting within that system.

A. BY MS. FOX: Totally.

The PPP list is required to be updated or revisited every 5 years, so that's going to be essentially at the halfway point of the plan, and then again at the full plan update.

We anticipate that especially, you know, at the far end of ideas, meaning things may come off and go on that list all the time. Ideas are kind of ideas, but we're really aiming to think kind of really big picture about all the different solutions that we're thinking about.

It is built in that we update that prioritization more frequently than the full Water Security Plan with

the indication, much like an engineering estimation if you're doing construction engineering. You don't know as much when you're kind of in that idea stage, but you get more and more refined as you kind of move through the pipeline.

I anticipate that maybe some things will end up on the idea list, and they'll come off for 5 years, or maybe they come back on depending on how the Region wants to prioritize them. We are not dictating a prioritization scheme for within each Readiness sub list, but they need to be prioritized on an individual basis within each Readiness sub-lists.

All the ideas are within each other; all the scoping is within each other; all the ready-to-proceed is against each other.

Q. When it says "Readiness" on Section 15C(1), you're looking at different stages of Readiness, not just like Readiness is the criteria.

A. BY MS. FOX: Correct. It is different stages of Readiness, so we have at least 3 things from each Region at various stages.

Q. Okay. It's just not clear. I mean if you read it, it looks to me Readiness is "You're ready or you're not ready."

Maybe that's not a binary, but if you just read that one word there, it does kind of invite that question of what is meant by Readiness.

A. BY MR. ERDMANN: I appreciate that.

Our consideration in trying to build it this way was to ensure we're going to always have kind of projects moving forward so that as we continue through the ongoing planning phase, there are ideas that are getting put into it, but that prioritization maybe needs to be more explicit if that's an instruction to Counsel.

Q. One more question about PPP prioritization or selection:

There was some Comment about whether there could be language about considering negative impacts of PPPs. Has that ever been considered, and if it was, where would that go within the Rule?

A. BY MR. ERDMANN: Yes, there was some consideration of this.

There is a section here under section -- okay. It is within Section 15.

Q. BY MS. FOX: 15C(5).

A. BY MR. ERDMANN: There is an opportunity here for Regions to sort of weigh in on these, and we did not include specifically critical Comments related to PPPs, but there is an opportunity to associate constructive advantageous things.

Q. Okay. Thank you. I just have a couple of quick questions, and I would love to talk with you all day about this, but...

I'm looking at the PPP types and I know this isn't an exhaustive

list, but one thing I've been thinking that's important is to look at water quality.

And I think one of our -- one of the people who commented today mentioned the importance of clean water, and it seems to me that there might be projects that are focused on trying to improve water quality.

I understand there could be overlap on some of these terms, but it might be something to consider.

Another one I have -- so that's a question. Do you think that that's an appropriate category?

Another category I want to ask you about is disaster recovery and hazard mitigation:

In terms of the way you're viewing water planning, are those appropriate topics that could be included in the list of PPPs?

A. BY MR. ERDMANN: Yes, this is an easy answer:

Yes, they should both be

absolutely included. The intention is this is not exhaustive, but a starting place for the list. But water quality and response related to water-implicated disasters.

Q. One more quick question:

I was listening to a discussion about the "shall" versus "may" in Section 14, and I did look over the Statute and I see where you used the "shall" language for things that were in Statute.

On B under Section 14, you added "... may consider...," and I think that's a good addition just as a commentary for me.

Is there a reason that you couldn't have "shall"?

I mean this is a Rulemaking and these are just plans, so even if it's not in Statute, is it possible to have "shall" for some of these items, which I think are good additions?

I'm just wondering why not use "shall." It doesn't have to be in

Statute; you're just making a Rule.

A. BY MR. ERDMANN: Commissioner, I think you're right in that we would be able to use the word "shall." One of our considerations when drafting this is making sure that we're not requiring things of Regions that they are not able to demonstrate that they did, so we were really trying to limit the requirements to things that were demonstrable after the fact, or the consideration that it was challenging to demonstrate after the fact, potentially.

That doesn't mean, however, that we couldn't change the word to "shall" within the language.

COMMISSIONER GARCÍA: Okay. I understand. Thank you for that.

HEARING OFFICER ORTH: Thank you.

Commissioner Chávez, do you have questions?

COMMISSIONER CHAVEZ: Thank you.

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EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. Can you hear me okay? I'll talk slow.

This question is for Mr. Erdmann:

You mentioned 1987 was the start of the Regional Water Planning process, and 2008 was the last plan that was accepted; correct?

A. BY MR. ERDMANN: That's correct.

Q. When was the very first plan accepted do you know?

A. BY MR. ERDMANN: No, I don't know. I'm sorry.

Q. The reason for the question is what was different for them in the 2008 plan. What were the circumstances that made them do it first and why and what was the reason? It's just a question.

A. BY MR. ERDMANN: Yeah, thank you, Commissioner.

I can't speak to who was first. My understanding is that the vast majority of the Regions were

finished long before 2008. The 2008 completion was because it was decided to tackle Public Welfare in a pretty detailed fashion and that was a time-consuming process. But that was the main hold-up for the last one.

Q. And then in 1994, you mentioned a Water Planning Handbook was created. What role did the New Mexico Water Dialogue have in that plan or that Handbook?

A. BY MR. ERDMANN: I know they had some meetings focused around this, but I don't know specifically the extent to which the input that they generated was present in that plan. Yeah, 1994 beat me by a little while to this.

Q. The reason I ask was the New Mexico Water Dialogue, because they were a water planning group specifically for the Regional Water Plan. Were they consulted in the Proposed Rulemaking process?

A. BY MR. ERDMANN: Well they were consulted and they were real partners

in developing this.

We had numerous, or at least 2, possibly 3 rounds of the Water Dialogue with the overarching theme of the whole event.

Maybe for the benefit of the Commissioners I will just mention quickly that the Water Dialogue is a group of people, a group that meets in Albuquerque annually for a meeting where they have a theme that's discussed broadly with a number of speakers, and generally speaking an afternoon process that's more interactive between the participants.

Over the last couple of years, and I think it's 3, but definitely 2, they have been focused largely on Regional Planning work. We have attended, participated, and taken the input collected into account in developing this Proposed Rule.

Q. Commissioner García mentioned the Common Technical Platform in the 2013 Plan or Revisions, and I know there was

a lot of pushback from the grassroots membership of the Regional Water Plans. What lessons were learned and have they been implemented in the new Rule process?

A. BY MR. ERDMANN: Thank you very much for that question.

As you mentioned there was quite a bit of pushback about that process. One of the lessons learned is that we should involve participants earlier in the process, and we have absolutely endeavored to do that with the development of this Rule set, and the implementation of this Act.

I think another piece that we learned essentially was that there was a lot of resistance to what we have classified or characterized today as a top-down approach, or the idea of the State coming in and essentially quantifying the water for all the Regions, and doing so even in the exact same manner, even in Regions that are a lot different in terms of water

supply from one another.

That's another area where we have tried to be responsive to some of the dissatisfaction that we had coming out of the last round of plans.

Q. Thank you.

Shifting gears, I was looking at your Tools and Templates in your Testimony and the Water Planning Mapping Dashboard. It says you used data, and you worked with local data science firms, et cetera, et cetera.

If there is new data can that be implemented and input in, or is it a living map set? I mean is that something you envision?

A. BY MR. ERDMANN: Yes, Commissioner, absolutely. We are hoping to continue flushing out these tools, continuing to add on to them as there are new data sets and we become aware of them. As they are developed we are hoping to add them in.

Frankly, it is a little paralyzing, as someone who really

believes in all this data, without being absolutely positive that it is comprehensive. Also it takes a tremendous amount of time to be sure you have got every single piece of data.

We are working to make sure that perfect isn't the enemy of good. While we have gotten started with this work, we are also trying to incorporate data and what we become aware of as we go.

Q. And then on the Tools and Templates and the Atlas of Plans, you mentioned it is all previous plans, so it includes the plans from '87 to present; correct?

A. BY MR. ERDMANN: That's correct, as well as other relevant plans; land-use plans, countywide plans, and municipal plans, and certainly all the water planning that's been done.

Q. And then you mentioned moving forward, like there would be like 3 Regions probably engaged at one time.

Do you have an idea what Regions might be selected?

A. BY MR. ERDMANN: We have had internal discussions about how to identify which Region should start.

One of the principals that sort of moved to the front is initiating work in Regions where work is already underway. Part of the reason for that is to make sure that we are not duplicating efforts.

We're trying to sync our work with the ongoing planning already happening in some Regions, but there hadn't been a definitive determination of which specific Regions would be the first 3.

Q. There was a mention about Subregions in certain areas. Is there a Subregion limit, or can you have 5 Subregions in 1 Region? Can you elaborate on that I guess?

A. BY MR. ERDMANN: Certainly.

There is not a limit. It's at the discretion of the Commission,

who would be in the position to approve these based on the criteria that are identified in the Proposed Rule.

One of those criteria is the impact of creating a Subregion on the remainder of the Region. If we imagine a large Region, for example, and they wanted to take a big chunk out of the middle and leave 2 small areas on the side, that would have an adverse impact on the folks who were left on the side, so that's one of the criteria for consideration.

But I can imagine that these Regions are quite large, and they could potentially have 5 Subregions depending on how effectively the structure was going to allow them to interact.

Q. So to clarify, and I think you answered it, but the Subregions don't have to have all the Representative Members in it, just the overall Region does; correct?

A. BY MR. ERDMANN: That's correct.

Q. And then I did have one last question regarding the membership:

I belong to an organization in Farmington, the San Juan Water Commission, which is a political subdivision of New Mexico. We do represent municipalities and rural water users. It appears that I don't see it fitting in any of these categories, but we do have a big interest in our basin, sop I'm just curious what your thoughts may be.

A. BY MR. ERDMANN: Thank you.

Our thoughts right now is I'm looking at the "Proposed Result," Section 12, Part 2, in Section (i), which includes:

"Existing Regional Water Planning steering committees who have continuously operated since the conclusion of the 2014-2016 Regional Water Planning effort."

Our intention when including that was to be capturing organizations

including the San Juan Water Commission, who we believe is captured by that definition. If we are incorrect about that, certainly you're the person to let us know.

Q. All right. I will look at that again.

COMMISSIONER CHAVEZ: Thank you. That's all I have. Thank you.

HEARING OFFICER ORTH: Thank you.

Commissioner Carrasco.

COMMISSIONER CARRASCO: No questions.

HEARING OFFICER ORTH: We will move to Commissioner Suina.

COMMISSIONER SUINA: Yes.

EXAMINATION

BY COMMISSIONER SUINA:

Q. Good afternoon, Ms. Fox and Mr. Erdmann.

Thank you, Madam Hearing Officer.

Thank you for your presentation and all the hard work. I

know I've seen you a number of places and seen you also provide updates to the Commission during our monthly meetings, so I know you've been working hard over this last year, year and a half, almost 2 years now. I just want to say, you know, I know how much time and effort and energy you have all put into this.

I want to go back to the initiation of this whole process, which is the Water Security Planning Act:

During that time frame I know there was an initial Proposed Rule, I mean proposed Act, and then there was some other iterations.

At that point in time were Pueblos and Tribes identified as "public" in maybe the initial role? If so, how did it evolve to the final passed Rule or Act?

I'm saying this so that I can ask some questions about how these Rules and Regulations pertain to how

Pueblos and Tribes are engaged and/or seen through this Rule.

A. BY MR. ERDMANN: Commissioner, thank you for that question.

Frankly there was a tremendous number of drafts during the drafting process of this, and I'd have to go back. I actually don't know that we have every single Draft to know if it was in the very first Draft, but we were already doing a bunch of ongoing work with the Tribal Water Working Group.

Using a structure like that to figure out if that was...

We were at a very productive moment in that process, and trying to continue that structure with something that was front of mind during the drafting of this.

The language that's still in there about working with IAD to develop what's now called the Water Security Tribal Advisory Council was in, if not the very first Draft, very early in

the drafting process.

Q. Thank you for that, Mr. Erdmann.

My follow-up question is as we move into the development of the Rules and Regulations, how do you see, given that there is a unique status, you know, of our Sovereign Nations, Pueblos and Tribes in New Mexico, that these Rules and Regulations address or navigate Water Rights considerations for Pueblos and Tribes?

I will also go a little bit further. Specifically, is there a difference between Unadjudicated Water Rights, Adjudicated, and the Settlements in terms of this Rule?

A. BY MR. ERDMANN: In terms of the Rule I don't believe there is a differentiation between those different levels of Water Rights.

Certainly there is acknowledgment in the language about the Tribal Advisory Council, and that there is an importance and need to have a Council looking out for the...

Excuse me for not having the language right in front of me.

Thank you, sir.

But the Water Rights, water needs and viewpoint, and sovereignty -- excuse me; I put that in a poor order.

Sovereignty, Water Rights and water needs are considered.

As was put to us earlier in one of the meetings with the group that's become WSTAC, you can't really do Regional Water Planning in a Seniority-based water system without looking at the most Senior Water Rights. We are highly aware of that, and we are trying to make sure that we have a productive process, in working with WSTAC, to let them steer that process with the greatest ability we can to help make sure we are addressing what is called for in the Act.

Q. Thank you for that response, Mr. Erdmann.

I know you shared in your response about WSTAC and what input, I

guess, WSTAC had with this process, so maybe just a follow-up to your responses:

How do you see WSTAC going forward?

A. BY MR. ERDMANN: Thank you for that question.

There are several pieces for WSTAC going forward. Most essentially based on the Proposed Rule there is a responsibility for them to develop a set of operating procedures to be able to operate WSTAC and determine an internal process for that. That's something that we would anticipate starting on very quickly following the Rules.

I worked with them up until this point, or at least our recent work has been focused --

THE REPORTER: I'm sorry, sir.

"I worked with them u until this point...," and slow down.

A. BY MR. ERDMANN: Okay. Rewinding is even harder than slowing down.

We worked with them up until that point.

Sorry, I've lost my train of thought here; just give me one second here.

I've lost my train of thought.

A. BY MS. FOX: I'm going to try my best.

We have worked with WSTAC up until this point mainly focused on input to the Proposed Rule. Going forward after the adoption of the Proposed Rule, assuming that we do not make changes to Section 8 of the Proposed Rule, we will shift our focus working with our facilitator contractor on developing Operating Principles for WSTAC.

Q. Thank you for that.

Again, I just want to clarify:

That doesn't take into consideration the differences in like Adjudicated, Unadjudicated, or those Water Rights going through Settlement.

Is that correct?

A. BY MS. FOX: That is correct.

Q. Okay. I have some more questions here:

Under the Proposed Rule, under Section 19.25.16.14, it says:

"Councils shall consider, with resources provided by NMISC Staff, the following information for inclusion in Regional Water Security Plans."

There is also a specific listing in there, and one of the subs is:

"Compliance with State water law including recognition of established Water Rights."

Another bullet underneath that is Recognition with respect to:

"... federally recognized or reserved Tribal Water Rights."

The thing is, through this

whole process just having worked with Pueblos and Tribes, what I'm trying to get my head around, and my question here is I would love to hear your response on how the Rule addresses this.

I guess it sort of leads into what I just said, but what does that mean in practice? I know we have WSTAC and implementation of water planning as defined in these Rules and Regulations.

A. BY MR. ERDMANN: Commissioner, as I understand it, the question is basically in practice how do we go about actually looking out for those Water Rights and incorporating them into the process.

Frankly, a lot of those specifics aren't worked out completely at this point. We haven't sort of initiated the process, so what we've really been working on doing is developing the portion of this Rule that talks about WSTAC's role which provides them an opportunity to get

feedback.

Actually, this is the thing that I had adjusted with some of the input that we took leading into this very meeting. The expectation there is that individual Tribes who are in a Region would have a seat at the Council, and certainly an opportunity for them to advocate for their interests there.

Then WSTAC, as a group, has an opportunity to look at the overall Regional Plan and provide some reaction about that depending on what the thoughts are of that Council. Some record of its perspective relative to a given PPP could be conveyed along with that to the Commission.

Frankly we don't know exactly how it's going to play out. It is one of the things we're really hoping to work out with the Advisory Council.

A. BY MS. FOX: I would like to add also that compliance with and Indian Water Rights Settlements is stated as

one of our Statewide objectives, which Director Riseley-White and Mr. Chakeres will also be Testifying to. We will not be able, and the Commission should not, essentially, accept a plan if those are violated.

Q. Thank you for that response, Ms. Fox.

If I can take that a little bit further, the last statement, would, in practice, if there was a plan that did impact Pueblo or Tribal Water Rights, would that go forth into this Commission for approval?

A. BY MS. FOX: I guess you mean impact negatively, which would violate the terms of any Indian Water Rights Settlement; is that the question?

Q. That's correct.

A. BY MR. ERDMANN: I suppose it could make it to the point of being at the Commission, but there is the internal process within the Council.

Our goal with having some Staff presence there and being part of

it would be so that would not happen and that those things would get resolved within a Regional Planning Council.

Essentially with the backstop of WSTAC having the opportunity to weigh in should something go forward...

Actually, we've recently have been given a good example of what something like that might be. Like what if there was, for example, a LiDAR survey to be conducted that covered the whole Region, or a portion of lands that belong to a Tribe, Pueblo, or nation. That qualification would be part of the plan, so WSTAC would have the opportunity to flag that.

As Staff in an Agency, we would be working to develop a recommendation for something, if we are going to stick with the LiDAR example, right, where we would work to have language in there to exclude collecting ideally, or certainly sharing any data that was collected

from lands that didn't want to share it.

But it could end up coming all the way in front of the Commission, yes.

Q. Okay. Maybe a follow-up to that:

You know, in the Proposed Rules and Regulations there is some important, I guess, milestones, if you want to call them "milestones," in the process. One is like the plan initiation prior to publication of the Draft plan, and prior to submission of a final plan, right, to the Commission.

Maybe I should have asked this earlier:

Are there unique or specific requirements in terms of Tribal engagement in those specific milestones, or with associated with those specific milestones?

A. BY MR. ERDMANN: Thanks, Commissioner.

We don't have specific requirements tied to those, and part of the reason is we are really working

to build a process that doesn't have a huge number of requirements and really focus on the deliverables on the back end of it as a way to make this more manageable for a broader range of approaches for how to undertake this process.

Certainly, one of the Tools and Templates we're working to develop is about how to work with Tribal interests, Pueblos, Tribes, and Nations, their Water Rights and Settlements, and the Seniority of those Water Rights when doing a Regional Planning process. It is one of the things we are hoping to develop a Template to provide some guidance on and help with the Staff a little.

A. BY MS. FOX: If I may add, because our Nations, Tribes and Pueblos are identified as Representative Members, they will be receiving invitation upon the initiation of that Council for the Region in which they reside.

Additionally, in Section 13 of the Rule, 13B states:

"Nations, Pueblos, and Tribes will be notified of all opportunities to be involved in the development, vetting, and prioritization of PPPs."

They are part of the list of people who shall or basically required to be identified and reached out to as part of this process.

Q. Thank you so much for that response.

I'll go to what some of the Commissioners went to in terms of the Subregions; some of the Subregion discussion here was prepping me.

I understand that is a recent change from the initial distributed Draft Rules I think earlier this year. If I look at the Docket I can see the change to that as a mechanism, and then back to my question about Pueblo and Tribal Water Rights:

With the Draft Rule and what it's kind of going through, do you feel comfortable right now that the "Subregion," which is defined, will be able, under current language, to ensure that Pueblo Water Rights and Tribal Water Rights will not be impacted and/or have a seat at the table for not just a Subregion, but the bigger Regions, you know, or the larger Regions?

A. BY MR. ERDMANN: There is kind of 2 parts to that, so let me see if I can get them both here:

The first is making sure that those Water Rights are being respected and intact, and frankly this is also a little bit in response to the Comments we got from Mr. Hutchinson prior to our break:

There is no ability, intent, expectation, anything that planning can change the nature of anyone's Water Rights. I mean the Water Rights are what they are; right? Just as

Mr. Hutchinson said, and also with regard to the Settlements with the Tribes or with anyone.

In terms of that piece, the planning really isn't going to and it doesn't have the ability to have any impact on that component.

In terms of the second piece of your question...

Every time I slow down I lose my...

Could you ask me the second part of your question again? I'm sorry.

Q. No worries.

The second part includes something I also forgot, Mr. Erdmann, because I'm thinking as you're talking as well.

That is would the Subregion, like decisions at the Subregion, you know, be impacted with the larger? I mean what is that connection to the larger, and making sure that Tribal and Pueblo Water Rights are not impacted?

A. Thank you for reminding me.

One of the important criteria for creating a Subregion is determining how that Region's priorities are going to be integrated into the larger priority list should be done in advance.

The reason for that, and this was actually pointed out by a participant in WSTAC; right? If you have a Subregion and they are off planning by themselves and show up to the larger group with this list of stuff, well it's going to be pretty difficult at that point to advocate to get those things integrated into the larger prioritized list, and understandably so; right? That large group will have been working through their own priorities, so the expectation is that that will get done in advance.

Now I'm sure there are lots of ways that could be done depending on what the prioritization process is, but it could be something as simple as

every one of these priorities, or every third one, or whatever; right? There just needs to be a process identified beforehand and the intent of that is to ensure that the work being done, no matter who the Subregion is, doesn't get lost in the larger process.

Q. Thank you for that.

I think I have a follow-up question, and we can maybe shift a little bit to what Commissioner García brought up earlier in the day, and one of the public speakers about capacity and resources for the participation in Regional Planning.

How does ISC look to implement this?

You know, for example, I've seen in Pueblos and Tribes where they are asked to participate in so many different ways. I mean with the number of just like small governments, Acequias, counties throughout New Mexico, there is not a big General Fund budget for having someone just to work

on water for the whole County or municipality or local government.

How do we implement this with wholehearted engagement or true engagement? How do we ensure that there is true engagement, whether, you know, collaboratively, but also with limited resources?

Does the Rule allow for or is there other thoughts by ISC in terms of providing additional resources for true engagement?

A. BY MR. ERDMANN: Thank you, Commissioner.

That's one of the sort of crux issues for this whole thing; right? How to make sure it's rigorous without making it onerous on the participants to be able to participate in this process and get this done.

There are a couple of approaches that we're trying to use, and one of them is to work with these Tools and Templates in offering support such that things can be very

productive during the time that people do commit. I mean there is just no way of getting around the fact that this is indeed another commitment.

To some extent we are really just working to make sure that we are very efficient with our use of time, and we certainly appreciate that this is a voluntary thing for most people, and that a lot of communities are really small.

This is actually a pretty big commitment of time from that whole community. It may be putting in many, many hours of 1 person's time out of a small community, so one piece is that Tools and Templates component.

Another piece is that especially during the Initial Planning phase, which -- sorry -- Period; I forget what that "P" stands for -- there will be a lot of support. Our hope is that it will be easier to update reports that update Regional Plans that have been created than it

will be to create sort of the initial one even with all that planning to start with. Our hope is to have Staff support to get it built and to have a lot of Tools and Templates to really help get things built.

We are also working on this big education piece and things like the Decision Support Tool for small water systems.

We didn't actually discuss this aspect of the Decision Support Tool, but in addition to helping small water system operators or representatives identify projects, it's also going to help them explain the value of those projects, make a case for that to the other people who are a part of that water system, to help them make that decision together.

And then finally we have the timeline for this laid out in a way that we're hoping it's not too onerous. An example is we have the update of the PPP list every 5 years. As

Commissioner García noted, one might choose to do that more frequently than every 5 years depending on what happens and how priorities change, and then we have the full update every 10 years.

A lot of those decisions were made to try and figure out how to not overtax small communities, but frankly it remains one of the real challenges.

Also, Commissioner Chávez' question about what the initial Regions are. The goal of interacting with ongoing planning is also similarly designed to prevent the Regions and all the entities participating in that ongoing planning from having to show back up next year for our Regional Planning by making sure those things work together.

We are aware of the problem and we have some strategies to solve it, but we don't have any ultimate strategies that will completely solve that problem.

A. BY MS. FOX: I might add that I

think these Councils, while initially the invite list for some Regions may be really large, we are hoping that, by bringing kind of these larger areas together, we can start kind of building trust and figuring out ways that we can work better together. That is one of the reasons that the Regions are larger than they were the last time around.

Q. Thank you so much, Mr. Erdmann, and Ms. Fox, for that response.

In the ongoing engagement, as, you know, we see over time Rules and Regulations needing to be updated or amended based upon now we're doing it and now we learn, "We have to change it."

Has there been any discussion in maybe timelines even for amendment of these Proposed Rules and Regulations?

A. BY MR. ERDMANN: Thank you, Commissioner Suina.

There has been some discussion

about that, actually, as far back as the drafting of the Act. The need to have some things that can adapt is a big part of the reason that we have Guidelines distinct from Rules in this process, with the expectation that the Guidelines, which are going to govern things like potentially funding agreements, or how the Agency would deal with that, those would be things that would be more easily changed.

The Rulemaking process is somewhat complex, but there is always the opportunity to come back and do this again. At this point we're really hoping that the set we have proposed, with whatever amendments they may receive, are going to last for some time.

Q. Thank you for that.

COMMISSIONER SUINA: Madam Hearing Officer, that's all I have for right now, but I might have some more later.

HEARING OFFICER ORTH: Thank you.

Did you have something to add, Ms. Fox?

MS. FOX: I think my hope would be that maybe we would get through the Initial Planning Period where everyone has a Water Security Plan before we think about revisiting, just so everyone has kind of gone through the process and can get all of our lessons learned kind of in one go versus maybe go through 3 and redo this process, and go through another 3.

That would be my opinion, but I'm also open to suggestions.

HEARING OFFICER ORTH: Thank you.

Commissioner Anderson.

SECRETARY ANDERSON: Thank you, Madam Hearing Officer.

I don't have any questions at this time, but I wanted to just say thank you to the Staff who have spent so much time putting this Rule together, and all the people that have commented on it.

The importance of getting the

Regional Planning process started is really, I guess, what I really want to highlight, because it is exciting to see this going forward. I can't wait to see what comes out of all the Regional Planning efforts that are undertaken through this Rule, so thank you.

HEARING OFFICER ORTH: Thank you.

Vice Chair Timmons.

VICE CHAIR TIMMONS: Thank you. I do have a few questions.

EXAMINATION

BY VICE CHAIR TIMMONS:

Q. Let me see where to start:

I think I'll go through the questions I have according to the sections on the Draft Rule or Proposed Rule:

Looking at Section 9, as we're talking about the Planning Regions, the Subregions I think is a really interesting challenge in how we think about the Commission's approval for

that.

When I read that I'm curious how you have been thinking about the Subregions and whether or not it says "hydrologically connected," or "hydrologically or otherwise connected."

Does that imply that they are contiguous?

I'm thinking "hydrologically" sort of implies continuity, but the "or otherwise" leaves me with a little bit of question about what maybe was implied there. Do you have thoughts on that?

A. BY MR. ERDMANN: Thank you, Commissioner.

I certainly would agree with your assessment that "hydrologically connected" implies contiguous. As to the breadth of that for including other types of connection, frankly, I don't know that was anticipated well enough.

There was a lot of discussion

early on about whether the actual Planning Regions ought to be contiguous or not, and the decision was made that they should be. I think that was the impression that we had relative to thinking about Subregions, but the specific question you just brought up I don't think we anticipated, so...

Q. Uh-oh; I've got a lot of weird questions then:

Let's see. I guess thinking about the Subregions and how they would operate, do you envision that they would be following the same rules as the broader Regions? I think this was a similar question to maybe Commissioner García, or somebody asked a similar question.

In other words they have the same structure and membership, and the same rules to follow in terms of governance that's outlined in the Proposed Rule here?

A. BY MS. FOX: No, they do not have any requirements akin to what the

Council's requirements are.

I think when we envisioned the Subregion process it was more to be able to bring ongoing processes that might be in a smaller area of a Region kind of in a through-line through.

It is my understanding/ assumption that Subregions would be used by, you know, an Indian Water Rights Settlement which has very specific processes already prescribed, or ongoing planning efforts that have been continuous already and have all those processes, though I guess a totally new one could also use this process to create a Subregion as well.

Q. Okay.

Then I'm going to jump over to the Number 10, Section 10C, where it says that:

"Councils may choose to self-convene."

The Subregions require Commission approval as written in this Proposed Draft, but the self-convening

groups just require confirmation by ISC Staff, and I think that's an interesting. They are similar, but different.

I guess I'm kind of curious what the self-convened groups will do if the entirety of the Region is ready to go, and they can self-convene and go, whereas a Subregion needs to be Commission approved?

A. BY MR. ERDMANN: That's correct.

I don't think you could do just a self-convened Subregion in advance of the larger Region existing because it would be very difficult to address things like how you are going to integrate the priorities of the Subregion with the larger regional priorities if you find yourself only with a Subregion and not a large Region with which to reconcile?

Yeah, I mean I think the idea is that essentially if a Subregion is able to get all the correct people to the table and issue the correct

invitations and get started with the process, that they can do that, and as an Agency we will do the best we can to support them.

A. BY MS. FOX: I also think that Self-Convening Regions has like a time limit. We are hoping to convene all of the Regions according to the Initial Planning Period over either a 4- or a 6-year period, so a Self-Convening Region would only have that time to operate, versus the Subregion clauses within the Proposed Rule are something that anybody could do at any point during both the Initial Planning Period or the ongoing Planning Period, hence the difference in kind of the approval points in the process if that makes sense.

Q. Sure.

Let's see.

Andrew, in your Testimony documents there was a Comment about contractors and Staff working to convene the Councils. I guess is that

only envisioned because there are contractors with WSTAC, or could it be that you are able to spin up others?

Like it's kind of laid out that you can work on up to 3 Regions for a period of time, and then move on to another 3 Regions. Could, if funding were available or assuming that, Staff and contractors be able to do all Regions and get going on all the Regions at the same time, or is it intended that it's Staff specifically?

Kind of the definitions that are laid out in the Proposed Rule says ISC Staff specifically and does not include contractors.

I guess I'm just trying to understand the vision for Staff support. There is a lot of mention of Staff support throughout this Proposed Rule, but I'm wondering if, in your mind, you're thinking that "Staff" and "contractors" need to be clarified that way so that you can move faster or slower, or whatever it is?

A. BY MR. ERDMANN: Yeah, thank you.

We have a Staff of 4, so there is some constraint associated with the size of Staff, which would be true no matter how large our Staff was, but there is a couple questions there.

One of them had to do with whether or not we were just going to include contractor support for WSTAC, and no is the easy answer to that. We intend to have contractor support for the Regions as well as they get started, and the development of Tools on a number of other pieces of this are basically contingent on being able to pay for that.

In terms of individual support or support from our Staff, we are also hoping to -- there is some discussion in the Act of having Staff for each of the Regions. One and perhaps the only edit that the Act received on its way through was that initially it was stipulated that individual, who would

work on behalf of that Region for the ISC, would also be located in the Region. That "... be located inside of..." was struck from the Act before it was passed, which probably makes it much, much more manageable to implement.

Our expectation is that we could essentially extend support with all the resources we have available to us, and part of the goal of iterating through the plans at the beginning is to have some lessons learned so that those keep getting better certainly for those first 3 Regions. All the familiar benefits of being at the front of a line exist; right?

The goal is to have benefits for the sort of second and third cohorts of that process as well, and developing additional Tools and Templates, and working to better our process among the benefits that would exist for this sort of second and third cohorts.

But that being said, should we find ourselves with an enormous or significant and large enough amount of Staff and funding to tackle these things all at once, and that was the direction we were given, we would certainly try to do so.

Q. Okay. Great. I appreciate that.

Let me just look through my multiple scribbles on this Proposed Rule.

I think I am jumping into Section 12, and this is perhaps, I think, my last question:

I'm curious if there is a minimum number of members required, so this is like a 2-part question:

If there is a minimum number of members required, you have a lot of Representative Members, At-Large Members, and potential Non-Voting Members. In some Regions you might invite 25 or 100 people, and maybe only 4 show up to do that. I don't know;

is there a...

Maybe this is just something we need to consider, or if it is written in here, point out to me the minimum number of people to kind of keep the ball rolling and get Regional Security Planning.

A. BY MR. ERDMANN: No, there is not a specification for a minimum number.

As you noted, it is an invitation process, so it's a voluntary process, but it will be challenging if only 4 people show up.

Q. It is a lot of work it looks like.

The second part of that question is just related to some of the Comments earlier. Are all of the members, or at least the Representative Members and At-Large Members, they are kind of described here as voting members. Do they all have the same weight in that vote, or is there any difference between those membership levels and the decisions that are made?

A. BY MS. FOX: As part of the Initial Planning Period as a Council is setting themselves up, they must decision their decision-making process. We have not prescribed how a Council would go about, you know, assigning votes, or if it's consensus or by majority, or however that is.

That is a process that we intend to provide different Templates on how large decision-making groups make decisions, but we are not prescribing that in the Rule to preserve the council's flexibility in that process.

VICE CHAIR TIMMONS: Okay. I think that's all the questions I have for right now. Thank you very much for your presentation; It was a lot of work.

HEARING OFFICER ORTH: Chair Sanchez.

CHAIRMAN SANCHEZ: Yeah, just to follow up on Vice Chair Timmons's questions:

EXAMINATION

BY CHAIRMAN SANCHEZ:

Q. The previous iteration of Regional Planning you characterize as "top-down," and this is "bottom-up." What consideration did you give to the number of membership on the Councils? I mean it could be 30 or I could be 100.

A. BY MR. ERDMANN: Yes, thank you, Chairman.

One of the places we looked is how other states have conducted some of these Councils, and our closest example was in Colorado. They have several of these Regional -- in their case they are called "Roundtables" rather than "Councils," but many of these have 50 or more members to them. We took comfort in that knowing that there was an ability to come to a consensus with a group of that size.

It's also our understanding that many of those groups started even larger, and that as they were better able to develop trust, that number has

come down somewhat.

We also feel like it's very important to make sure that all the interests in a Region are represented, so it was a matter of trying to balance the size of the Council against sort of degree of representation for everyone.

Q. Previously much of the data was provided for Regional Planning. Now it appears that those Regions will have to develop their own, which I feel is going to be pretty resource-intensive. How is the ISC going to support that?

A. BY MR. ERDMANN: Well Chairman, the ISC intends to continue putting money into developing resources and supporting the development of data and the "... best available science" in support of those things.

Our hope is that as we address some of the existing needs in that regard, that we're able to get to sort of a more fine-grain level of detail and address that.

One of our real primary

focuses here, or foci here is to make sure that we are not letting ourselves be kind of paralyzed by this lack of data.

The projections we have looking forward are for a less consistent, less predictable, and less dependable source of water. I think that's a really big chunk of the challenge we are looking at in that we are looking at a future of less predictability to trying to figure out how to do planning in a situation where you don't necessarily know how much water you're going to have. I mean what you have in 1 year is not going to be indicative of what you will have the following year.

Q. What is the estimated cost to support each Council?

A. BY MR. ERDMANN: I don't have a number in that form, but the budgets that we have been using to operate at this point have been awarded in 1-year increments.

I can certainly talk about the budget that's gotten us to the point we're at up to this point, but I don't know what we have available to us in terms of how it will be divided amongst the Councils, but it will be once we get started with that work.

Q. Given that, how would you phase each Council?

A. BY MR. ERDMANN: Well there are assumptions underlying these Proposed Rules, and one of those is that we are able to acquire funding moving forward that would support continuing this work.

Q. Back to Vice Chair Timmons, how would you phase in each Region?

A. BY MR. ERDMANN: Our expectation or our intent is to develop a 2-year process that's used to do planning that has sort of a milestone phase in the middle, so there is a first year and a second year to that process, and our intention is to bring 3 Regions through that at a time.

We are also going to have an

Advisory Group, which is what we call them, or an Advisory Roundtable that is going to provide the whole Agency direction in relation to rolling out that plan. We are going to work with one of our contractors to make sure that we're using the Tools and Templates to our greatest advantage.

We are planning to essentially start working on that first year with the first round of Regions that are identified, and start slogging through the process with our contractors.

Q. What's your projection on how long it will take to do all 9 Regions?

A. We have 2 kind of proposals for how to go about that:

One is that we do them sequentially, in which case it would take 6 years. It would be a 2-year process for 3, another 2 years to get up to 6, and another 2 years to get to 9.

Another option would be that we could compress that somewhat such

that the first year was conducted for 3 Regions, and then as the second year started we bring in 3 other Regions to do the first-year process, and that would compress the timeline from 6 years to 4 years.

CHAIRPERSON SANCHEZ: Thank you.

HEARING OFFICER ORTH: All right. Any other Commission questions?

Vice Chair Timmons.

VICE CHAIR TIMMONS: I'm sorry; my notes were so scribbled here, but I had one at the bottom:

FURTHER EXAMINATION

BY VICE CHAIR TIMMONS:

Q. I was just curious if you had thoughts or perhaps seen in other states where they do Regional Planning of some type, and they actually get the Regions together in some format such that they can learn from each other and exchange ideas. It's kind of along the lines of your Tools and Templates, but has that been...

I know that perhaps that's not exactly a Rule to be made, but is that part of the thought process that's happening in this whole Regional process?

A. BY MS. FOX: Yes, we have looked at a number of other states and their Regional Planning processes. A lot of times, the touch points between Regions exist via kind of statewide boards.

Colorado has what is called their interstate kind of Stream board where the Regions kind of talk to each other.

I think Texas, though, is more akin to the Staff person who is assigned to each of the Regions that serves as that kind of connection point.

Kind of building off of Chairman Sanchez' question about the rollout, if budgets allow and we are able to both complete the Regional Planning process and hire Regional Planning Staff for each Region as they are getting completed as well, those,

you know, left behind Regional Water Planners could continue to serve as that kind of touch point for knowledge-sharing going forward as well.

A. BY MR. ERDMANN: Maybe I'll mention one other piece, which is that the Non-Voting Members of the Board includes up to 2 positions for hydrologically connected Regions. If we are here in the Middle Rio Grande, that could be the Upper and Lower Rio Grande as the hydrologically connected Regions.

A. BY MS. FOX: That's an idea out of Texas, and they were really psyched about it, so it seems great.

HEARING OFFICER ORTH: We will move to Commissioner Suina.

Well go ahead, Commissioner Carrasco.

COMMISSIONER CARRASCO: Yes.

Thank you for today. I know you've been up there a long time, but I'll ask my question that was really teed up by a question Commissioner

Timmons asked:

FURTHER EXAMINATION

BY COMMISSIONER CARRASCO:

Q. Who can propose to subdivide these Regions; is that the Council or is that ISC Staff. Who can actually make that happen?

A. BY MR. ERDMANN: That would be the Council itself, and the Regional Planning Council would bring that forward to the Commission.

Q. Is it clear in the Proposed Rule that is the case?

A. BY MR. ERDMANN: Well I feel that it's clear, but it's possible that we have spent a tremendous amount of time looking at these Rules and I am not seeing it as clearly as I perhaps should.

A. BY MS. FOX: I do think that in Section 9B it specifically says:

"Regional Water Security Planning Regions," which I think implies that the Council would

be part of the initiation of a Subregion as well.

COMMISSIONER CARRASCO: Okay. If you all feel it's clear, thank you.

HEARING OFFICER ORTH: Okay. Commissioner García.

COMMISSIONER GARCÍA: Thank you.

FURTHER EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thanks again for all your hard work and for answering our questions.

To continue on the same question that Commissioner Carrasco had, and I had asked that similar question earlier, and it has come up a couple of times, so it's maybe not clear. It's implied or it says it's "subject to Commission approval," they may be subdivided into Subregions.

I don't know if it has to be clarified here, or it can be clarified in the Guidelines, but it seems like there has to be a procedure in terms of like how it's brought forward and

how that's done.

Just a thought, or my feedback is that it's not totally clear. It may be implied, but it's not real clear.

I also had a question related to something that Commissioner Timmons, or Vice Chair Timmons, brought up:

I know that the one thing that has come up in past years and the past rounds of Regional Water Planning is sometimes there are conflicts between Regions where, you know, neighboring Regions will both say hey have a supply gap and they want to go import water from somewhere else. I'm just wondering whether this Rule contemplates some type of process for reconciling that, or are you avoiding that?

I mean is there some kind of constraint put on Councils such that they can't just, you know, go raid water from another Region, or are you going to have a process for that?

A. BY MR. ERDMANN: Well

Commissioner, you're absolutely right in that it was one of the problems we had in the first round of planning. Many Regions intended to solve their projected shortages by, I was going to say "borrowing," but perhaps it is acquiring from their neighboring Region a sufficient amount of water to do that. But addressing that and making sure that this is a holistic Project is one of the real goals of rewriting it.

A lot of that comes down to some of the information about the State's interests essentially, and that's one of those pieces; making sure that these are implementable. Specifically that means that they cannot all point to each other to take water from one another's Regions, because that was paralyzing in terms of implementing the first round of Regional Plans.

Q. One final question I have is about the ISC resources, and I've

noticed in places it said, "Subject to available resources, ISC Staff will support the process."

I understand it's out of your control in a way. I mean you have to implement a Rule, and there is this other side of things that relates to how the process is funded.

If there were a way for ISC to be funded adequately, what would that look like? Like in the ideal world, if ISC had the staffing, "subject to available resources," what "available resources" would be ideal for ISC to assist these Regions if it's not ISC Staff?

I was involved in both rounds with my Region, and I think it was really similar. They had to hire their own consultants and apply for funding. Is that in this Rule, or is there some other place where that's codified or outlined such that Regions...

I mean how do Regions resource themselves to do this work, if you can

layer that together?

A. BY MR. ERDMANN: Okay. The first question, what we would have to look for in terms of the ISC Planning Program and being able to do all this stuff? I frankly don't know how to answer that question. I mean I'm not quite sure what our role as Staff is in terms of talking about agency resources in that way, so I'm not sure how to go about answering that question.

In terms of the second piece of how we go about getting funding and support to the Regions for them to be able to move forward, our intent is, again, "subject to available resources," to address this largely in the Guidelines such that we would have a process for being able to apply for and receive funding for use by a Regional Planning Council in pursuit of its goals.

Now that would be the type of thing that is would be in the Guidelines to some extent, because we'd

like to be able to revisit it with lessons learned.

We have taken some cuts at that. There was Draft language put out for that Guidelines along with the Discussion Draft. Frankly, we modeled that after the ACDIF funding, which is the Acequias and Community Ditch Infrastructure Fund process, which is also handled by our Agency through the Acequia Bureau, and it is a familiar process for folks who would work with the ISC. Our hope is to kind of build from there and figure it out.

Q. Okay. Your answer is it will be addressed in the Guidelines.

A. BY MR. ERDMANN: That's right.

COMMISSIONER GARCÍA: That's helpful; thank you.

HEARING OFFICER ORTH: Thank you.

Commissioner Russell.

COMMISSIONER RUSSELL: Thank you.

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FURTHER EXAMINATION

BY COMMISSIONER RUSSELL:

Q. I still am a little concerned about the Subregions:

The people working in the Subregions don't have the same requirements of diversity that the Councils have. That is correct; right?

A. BY MR. ERDMANN: Yes, that's correct.

Q. When you come to all the criteria and considerations, those all apply to the Council, not necessarily to the Subregions. How does that work?

A. BY MR. ERDMANN: Well that's an excellent question.

I think part of that is going to be left up to the proposal for an individual Subregion and how they want to go about addressing that.

I think in a couple of the instances that we have contemplated, and I'm sure there will immediately be additional instances beyond those that

we've contemplated, it would depend.

In the instance that you had a Settlement area that was part of a Pueblo, Tribe, or Nation settling their Water Rights, that would be a fairly contained universe to work inside of; right? That would resolve the question more clearly.

In the instance that you had, for example...

I'm trying to not to pick a specific example, but I'm going to do it anyway:

Let's say that in the Estancia Basin, and we've heard clearly through Comments that the folks in the Estancia Basin would prefer to be in their own Region and not be included with the southern half of our currently proposed set of Regions.

In terms of them trying to figure out how to work together and make sure that they are encompassing things like Public Notice, I think ultimately that's going to be something

where they have to do that to the satisfaction of their larger Regional group and their individual constituents, but this is an area where it's really challenging.

If we make it really prescriptive on the Subregions, they become very much just like new Regions. We will then find ourselves kind of back to the situation of having a lot more Regions and an increasing number of them, so there is some difficulty in how to rightsize that, but I think a lot of that is going to come down to the individual proposals around individual Subregions.

Q. I can see it's going to be challenging, especially if you did place a hold, like "We will give you every third slot," and there is no review of the projects that the Council went through, which would be kind of awkward.

Does the Council themselves review the projects that the Subregion

proposed under their own set of rules?

A. BY MR. ERDMANN: I think the Council certainly would want to have some oversight of those projects in the sense that those would not be things that could flagrantly conflict with the overall values around the larger Council.

Q. Then I just have one other question, and that goes back to the issue of data gaps:

I understand the Comments that you made about not wanting conservation plans to be delayed just because the set of information wasn't perfect, but I just wonder if the Councils may not delay the development or updates to a plan due to lack of data period. I mean no data. Could you still move forward?

Is that a question that could be qualified by saying, "Data gaps inherent in the plan being developed will be identified"? Does that answer the same issue or does it answer the

same question?

A. BY MS. FOX: I think yes.

I think the intention behind that statement is to make sure...

You know, the easiest way to keep a status quo process going is saying, "We don't have enough information to change our ways."

Q. But you have to have some information.

A. BY MS. FOX: We have to have some information, and I think the larger scientific consensus -- not "consensus," but the foundation of the Leap Ahead Assessment is essentially the foundation of kind of the planning that we're looking at forward in the future; a future with less water, a future that is hotter.

COMMISSIONER RUSSELL: Great. Thank you.

HEARING OFFICER ORTH: Next is Commissioner Chávez.

COMMISSIONER CHAVEZ: Thank you, Commissioner Russell. You asked one

of my questions, so thank you for that.

FURTHER EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. My second question is a Subregion again, the basis of "... hydrologically or otherwise connected."

We talked about that quite a bit. What about in the cases of like a modified connection or a false connection, like the San Juan-Chama Project?

Do the contractors have the ability to participate in the Northwest Region is my question.

A. BY MR. ERDMANN: Thank you for that question, Commissioner.

It is a fascinating question for all of us who like to think about watersheds and what the implications are for watersheds when you bring a pipe in and divert at some point in the middle of the watershed.

When we talk about 70% f the people in the State wanting hydrologically bound Regions, my guess is a significant portion of those people didn't anticipate this sort of complexity when they answered that question, but I do have a couple of answers for how that would be considered:

One is that I certainly think in terms of looking at hydrologic connections for those non-voting At-Large Members...

It's really interesting to think about San Juan water contractors participating in the San Juan watershed because I was thinking of it in the opposite direction, but certainly that constitutes a hydrologic connection; right? If you are sharing the same water source, you are going to be subject to the same shortages, so I think that's pretty clearly a hydrologic connection even if it was artificially constructed.

Yeah, I think that would be a consideration in figuring out how to do that.

The San Juan contractors would be a group that was continuous without necessarily having a geographic boundary in the way that was asked by Commissioner Timmons, but I think it is a pretty compelling reason to create a Subregion of the folks who are operating with access to the San Juan-Chama water within the Middle Rio Grande in particular, or the Middle and Upper.

Depending on how we divide the Regions would be a really excellent example of some of these Cross-Regional Subregion groups, but...

A. BY MS. FOX: I think though that the main mechanism to allow essentially coordination and consideration of essentially the San Juan water contractors is those Non-Voting Members on the Council, which San Juan water contractors I think would very easily

fit into the role of significant Water Rights or water assets in a different Region that they are not a part of as well, but the Subregional process might not be necessary if they are sufficiently represented by the Non-Voting Members of another Council.

Those also who are, you know, in your area of the State up in Northwest New Mexico could be one of the Non-Voting Members in the Middle Rio Grande for that reason as well.

COMMISSIONER CHAVEZ: Thank you.

HEARING OFFICER ORTH: Commissioner Suina.

COMMISSIONER SUINA: Thank you, Madam Hearing Officer.

FURTHER EXAMINATION

BY COMMISSIONER SUINA:

Q. I want to go a little further into what Commissioner Chávez started going into in terms of like the Middle Rio Grande:

If there is entities within

the Middle Rio Grande, whether they are the contractors, or the Pueblos, the six Middle Rio Grande, but they have interest in, say, the Upper Rio Grande Region because that's, say, where their water is stored, in that case can you elaborate on whether there is potential participation or engagement with the six Middle Rio Grande through this Rule for that Region, or for the upper Region?

A. BY MS. FOX: Yes, they would also potentially be a candidate for that non-voting seat in the Upper Rio Grande Council.

After having this discussion today, maybe being capped at 5 is too little, so maybe that cap needs to be increased.

A. BY MR. ERDMANN: I would say that's correct; that's where they are reflected.

Frankly I think this is where we struggled with the size of the Regions; right? You hear that there is

some resistance to the size of the Regions in terms of participation, and then people are concerned that they are so large that they are perhaps not local.

But the concern you just raised of, "Well even as large as they are, some of them still have source water areas that are outside of their own Region," which is the challenge of getting these things sized correctly in order to be able to get everybody at the table.

Q. To that point I understand the balancing act there. That said, given that some of the most Senior Water-Right holders are in the Middle Rio Grande, and they would be Non-Voting Members, and again going back to my question, what checks would be in place at that point if there were projects in the Upper Rio Grande Region that would impact the Middle Rio Grande Region in terms of their Water Rights and Tribal Sovereignty rights?

A. BY MR. ERDMANN: Thank you for the clarification; that's exactly what I was going to ask.

When you're suggesting that, for example, if a Project were to get funded at the upper part of the Rio Grande, or the northern part as we usually refer to it here -- the "upper parts" are sometimes considered the Colorado portion of the basin -- that then had an adverse effect on the Senior Water Rights downstream, particularly a Tribal Settlement right, that's where we're basically working within the Rules of the State Engineer's Office where we are not able to change -- we are not only "not able," but there is no desire to change how Priority Dates work. That is how New Mexico water law works. Trying to make sure we are respectful of that and not circumventing that through essentially construction projects, that's an essential function of our Agency; right?

This is the Agency that, to a large extent, establishes that Priority system and those rights, and protecting the integrity of that process is just as critical a role for this Agency in all the stuff that we do.

COMMISSIONER SUINA: Thank you, Mr. Erdmann.

Madam Hearing Officer, I have more questions, but I also know that we have like a 3:30...

Can we keep going without a break.

HEARING OFFICER ORTH: Please keep going.

COMMISSIONER SUINA: Okay. I will keep going then, because I want to take a little different path here.

Q. I would to go back to the Subregions and what the requirements are at the Subregions:

To clarify, for Subregion requirements, in relation to their PPPs or in their consideration of their plans, do they need to coincide with

the priorities of the larger Regions?

A. BY MS. FOX: As stated in Section 9B(5), they must:

> "... determine a process for how the work of the proposed Subregion will be integrated with the Regional Water Security Plans and associated Regions, including the prioritization of Projects, Programs, and Policies."

The intention is the process of how they are going to be integrated will be figured out up front before the Subregion is approved by the Commission.

Q. Okay. Then just to clarify the other way, would the proposed Subregion need to take into account Tribal Sovereignty, Tribal Water Rights, and the needs of Tribal communities?

A. BY MR. ERDMANN: Yes. I mean I think that's part of the Act essentially.

A. BY MS. FOX: That is also one of the proposed edits to the Subregion process, which reads:

"whether the proposed Subregion would enable more effective input into the Regional Water Security Program of Tribal water concerns and the needs of Tribal communities."

Q. Okay. And so that's a proposed edit, just to clarify.

A. BY MS. FOX: That is a proposed edit that we're also suggesting, which was suggested by the Pueblo of Laguna.

Q. Thank you for that.

In respect to existing State of federal Rules and Regulations, do the Proposed Rules and Regulations require the PPPs to be in compliance with State and federal Rules and Regulations in general?

A. BY MS. FOX: Yes.

Q. Does that include water quality Rules and Regulations?

A. BY MS. FOX: Yes.
Q. In respect to Tribal Sovereignty do these Proposed Rules also require compliance with Tribal water quality rules in the case where a Pueblo or Tribe has treatment as a State designation, and has established their own water quality standards?
A. BY MR. ERDMANN: That is not explicitly included in here, but that would make sense.
Q. Okay.
A. BY MR. ERDMANN: I guess I would have to read very carefully over our "Definitions" to figure out if that's included in our existing language, which I will do before the fullness of this hearing.
Q. I apologize; I don't mean to put you on the spot.
A. BY MR. ERDMANN: That's where why we are here.
Q. I didn't really see that explicit identification in the Rules where it's clear, it just talks about "... State

and federal Rules and Regulations."

We have a number of Pueblos and Tribes in New Mexico, to the Public Commenter during the break where, you know, just like folks that use Acequias, Pueblos and Tribes use the water directly from the source, whether it's a river or stream.

In water planning I know sometimes we bifurcate water quality and water quantity, but we use the water directly from the source, and certain Pueblos and Tribes have established water quality standards that may be different than the State standards or different or more strict than federal standards as an example.

I just want to ensure that it is explicit and it's taken into account in these Rules and Regulations as a consideration when there is PPPs and other planning milestones through this process.

A. BY MR. ERDMANN: Yes. Thank you, Commissioner, for pointing that

out, and we are aware of some of those types of Regulations.

Frankly, the water quality stuff is not really the primary wheelhouse of this. As you say, these things bifurcate frequently, and in this case it bifurcates somewhere upstream of us.

Trying to figure out how to address water quality issues without putting stuff within the set of Rules that we're not able to enforce is another of the balancing acts that we're working on here.

COMMISSIONER SUINA: Thank you so much for that.

HEARING OFFICER ORTH: Okay. Other Commission questions.

Okay. Ms. Becker, did you have something to clarify?

I'm sorry, Commissioner García.

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FURTHER EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you for indulging me in one more question, because I have had several opportunities to ask, but I just wanted to come back to the ranking of PPPs:

Just looking at the language is there a place in the Rule that I'm missing that says that there are criteria that would be developed, or is that going to be in the Guidelines?

I'm just wondering if I'm missing something in terms of the Council determining how those are going to be done.

I know you said earlier what you anticipate having more of like a process-driven criteria based on Readiness, and there is a "Readiness" word here. Is there another way to look at need, or different sectors within the Region where you might have some that are agricultural projects, or municipal, or rural water projects?

I mean how do you anticipate that being decided and what's the -- yeah, like where are those criteria going to be?

Is there any guidance in this Rule for what those criteria are going to be other than "Readiness"? Is there a "need" consideration or like a sector consideration?

A. BY MS. FOX: There is no other criteria except that it must land within 1 of the 3 Readiness buckets.

According to 15C, each item or each PPP will have each item ranked individually relative to all other PPPs on that sub-list Region-wide. We are deliberately not specifying additional criteria for how that prioritization gets done because we anticipate that each Council will have different criterion for how they want to prioritize their PPPs.

That is something that is required for the Councils to figure out and determine ahead of time in

their Operating Principles, which is in Section 10B(3)(e) it says:

"the decision-making process to be used by the Council to prioritize Projects, Programs, and Policies..."

It's a process that we are deliberately not laying out in this Proposed Rule in anticipation of Regions having different processes for prioritizing their PPPs within the Readiness sub-list.

Does that make sense?

Q. I understand better what's in the Rule now. Thank you.

COMMISSIONER GARCÍA: That's all I have; thanks you.

HEARING OFFICER ORTH: All right. Nothing else from the Commission.

Ms. Becker, did you have any clarification? We do need a break, and then we have a fair amount of Public Comment after the break.

MS. BECKER: I understand, Madam

Hearing Officer. I believe that my follow-up questions will follow all Public Comment and questions by the Commission, and I will have that opportunity at the close of hearing. Is that correct?

HEARING OFFICER ORTH: Yes, absolutely.

MS. BECKER: With that, Madam Hearing Officer, I do want to identify that I do have additional witnesses that I can start or not start until tomorrow; I will take your direction.

HEARING OFFICER ORTH: Yes, I think between our need for a break and the number of Commenters we are going to hear from between now and 5:00, I would like to do those 2 things, just to make sure that we get folks on and off before 5:00, so I'm not sure we're going to get to any more of your witnesses before then.

MS. BECKER: Thank you; I'll put them on notice.

HEARING OFFICER ORTH: We are

going to take a 10-minute break. When we come back we will have a brief Comment by Tom Paterson, and then we're going to go to Governor Riley, the other Pueblo Governors, and then to WSTAC in whatever order they would like to arrange themselves.

Thank you all; let's come back at 3:42.

(The Evidentiary Hearing recessed from 3:31 p.m. to 3:44 p.m.)

HEARING OFFICER ORTH: Let's come back from the break, please.

Let's come back from the break, please.

All right. Where is Mr. Paterson?

MR. THOMAS PATERSON: Right here.

HEARING OFFICER ORTH: Okay. If you would take your place, please.

Please take your conversations out of the room; we are going to begin with Mr. Paterson.

Mr. Paterson, if you would please spell your first and last name,

and your affiliation.

MR. THOMAS PATERSON: Yes, ma'am.

Tom Paterson; T-O-M P-A-T-E-R-S-O-N with one "T."

THOMAS PATERSON,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. THOMAS PATERSON: Madam Hearing Officer, Commissioners:

I am a Catron County cattle rancher. I serve as President-Elect of the New Mexico Cattle Growers Association on whose behalf I address you today.

As we reviewed the Draft Rule we became concerned that it would be a mechanism, or could be a mechanism that intentionally or unintentionally would disrupt the traditional water uses in agricultural and rural New Mexico by favoring urban users over agriculture

in our rural communities.

In the Comments we submitted to you on September 21 we went section by section and detailed what our concerns were. We also provided 9 suggested changes to the Rule to address those concerns. They relate to transparency, such as on the issues you were identifying Commissioner García, as well as meaningful representation for agricultural and rural communities, and guardrails.

According to the Testimony this morning from Mr. Erdmann, none of our Proposed Changes was accepted. That, frankly, simply highlights our concern that this endeavor will indeed be used to try to disenfranchise rural New Mexico in general, and agriculture in particular.

If that occurs this Draft will disrupt local economies and our culture across rural New Mexico; this Rule does not protect against that.

I listened closely to your

questions. A consistent phrase used in the responses to your questions this afternoon was, "We hope..."

Respectfully, in its current form, the Draft Rule is not ready for prime time, and it may never be. At the very least the ISC has work to do to address the concerns that you have raised today, the very genuine and legitimate concerns you have raised today so that this doesn't come back to you time after time after time in the future. Thank you very much.

HEARING OFFICER ORTH: Thank you, Mr. Paterson.

Are there questions of Mr. Paterson?

Commissioner García.

Mr. Paterson, if you would return.

COMMISSIONER GARCÍA: Thank you, Mr. Paterson. Thank you for being here. We appreciate your voice and your input to this process.

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EXAMINATION

BY COMMISSIONER GARCÍA:

Q. I haven't reviewed your Written Comments in detail, but you mentioned the issue of transparency.

Do you think you could elaborate a little bit on the specific concern about transparency and what kind of recommendation you might have been making in your Written Comments?

A. MR. THOMAS PATERSON: I can, and it goes exactly to your question, Commissioner García:

We would like to see the criteria by which projects will be evaluated. Let's make it transparent such that everyone knows what they are.

Cattle Growers has been very much involved in, for example, promoting agricultural water resilience before our Legislature.

You know, the one criticism we've heard of that Program, which was wildly oversubscribed, a huge success since it was passed by the Legislature

in this past section, was what are the criteria? That underscores why it's so important to have those criteria laid out such that everyone knows the Rules and it's not left to guesswork.

My response is exactly where you were, Commissioner.

Q. BY COMMISSIONER GARCÍA: Okay. Thank you.

HEARING OFFICER ORTH: Vice Chair Timmons.

EXAMINATION

BY VICE CHAIR TIMMONS:

Q. Mr. Paterson, are you suggesting it is unclear in the Rules that we're reviewing right now, or the Proposed Rule that include the PPP criteria as a Rule, or is it something that needs to be laid out in the process, or perhaps in the Guidelines along the way so that it's clear to everyone?

It sounded to me from earlier Comments that some people felt that the criteria for evaluating PPPs may need

to be more Region-specific and more thought out according to what those Regions' priorities are.

A. BY MR. THOMAS PATERSON: We would prefer to see it in the Rule, but we would prefer to see it somewhere.

Q. Okay. Noted.

VICE CHAIR TIMMONS: Thank you.

HEARING OFFICER ORTH: Other Commission questions.

Commissioner García.

FURTHER EXAMINATION

BY COMMISSIONER GARCÍA:

Q. I am interested in hearing thoughts about how we achieve rural representation. The concern, from my own experience going to Regional Water Planning meetings, is that you have local governments who are paid, and then you have the volunteers. I'm wondering if your Association has given any thought to what would be an appropriate mechanism to make sure that rural people who don't have a funding

source, or they are not paid Staff, like what would be an appropriate mechanism to assure that kind of rural equity such that there would be participation?

A. BY MR. PATERSON: I underscore your concern:

I am from Luna; Luna is a 5 hours from here. People in Luna go to work, they don't have time to devote the level of volunteer effort that this Project is going to require, and I'm not sure who does, you know, with one exception:

We have Howard Hutchinson with the San Francisco Soil and Water Conservation District. Mr. Hutchinson is a voice for our part of Catron County, but he is, unfortunately, few and far between.

What's the mechanism for getting rural New Mexico involved in this process?

You know, I guess one question is why do we even need this

Rule frankly? Why do we even need this Rule? Can't these projects be developed without having this organization that's being imposed on the development of projects?

Unfortunately, Commissioner, I don't have a good answer for you, but it is definitely a problem. You know, from Cattle Growers' standpoint we deal with the issue constantly. I've been here now 3 weeks, and as of next week it will be 4 weeks out of the last 4 weeks that I've been up here, which means I leave my crew to do fall work. We have work to do on the ground, and I'm not atypical of that.

I mean finding the people who can devote the amount of time to projects and do this type of volunteer effort, I mean we don't have other resources in our poor County so it is asking a lot.

COMMISSIONER GARCÍA: Thank you very much.

HEARING OFFICER ORTH: Okay.

Anything else?

Thank you very much, Mr. Paterson.

MR. THOMAS PATERSON: Thank you very much, Commissioners.

HEARING OFFICER ORTH: Okay. We are going to turn to the Pueblo Governors and Ms. Waheed and WSTAC.

We're starting with Governor Riley, unless Ms. Waheed has something to say first.

No. Okay.

Governor Riley.

GOVERNOR CHARLES RILEY: Good afternoon, Chairman Sanchez and members of the Interstate Stream Commission and Staff. My name is Charles Riley; C-H-A-R-L-E-S R-I-L-E-Y.

GOVERNOR CHARLES RILEY,
after having been first called,
was examined and testified as follows:

PUBLIC COMMENT

BY GOVERNOR CHARLES RILEY: I am the

Governor of the Pueblo of Acoma. I appreciate the opportunity to speak to you today on behalf of Acoma regarding the Proposed Rule for Regional Water Security Planning.

First I would like to acknowledge some of my fellow Tribal leaders that are in the audience:

Governor Shendo from Jemez, and his Lieutenant Governor Chosa;

Governor Herrera from Cochiti and his Lieutenant Governor Suina.

Councilman from Zuni, Wemytewa.

Sorry; I always butcher their names.

Lieutenant Governor Jojola, and other former Governors that are in the audience. Thank you for making your presence here today.

I also want to acknowledge the hard work of the Water Security Tribal Advisory Council and its Ad-Hoc Committee, as well as the New Mexico Interstate Stream Commission Staff.

Together we've spent many hours and many months reviewing, discussing, and refining this Proposed Rule to reflect the intent of the Water Security Planning Act and of the shared responsibility we all bear to protect New Mexico's most vital and sacred resource, which is water.

The Pueblo of Acoma strongly supports the recommendations presented by WSTAC Ad-Hoc Committee to the Commission submitted on September 27, 2025. These recommendations were formally adopted by the Pueblo of Acoma by reference and should be incorporated into the Final Rule under consideration today.

As part of these Rules we especially appreciate the recognition of WSTAC as a formal Advisory Board and its role to ensure that Tribal Sovereignty, Water Rights, and water needs are respected in State Water Planning.

However, there remains several

key areas where this Rule must be strengthened if it is to live up to the vision of true partnership between the State, and the Nations, Pueblos, and Tribes of New Mexico.

First, the Proposed Rule must generate meaningful and equal participation of the Tribal governments in the Regional Councils. As currently written, Tribes can be easily outnumbered by municipal and county irrigation district representatives and a variety of At-Large Members.

The Pueblo of Acoma believes that when Regional Councils make decisions that may affect Tribal Water Rights, lands, or data, those decisions must require the consent of the affected Tribal governments. This is not simply a matter of courtesy, it is a matter of Sovereignty.

The Water Security Planning Act itself in Section 72-14A-14B of the New Mexico Statutes require the Commission to:

"... establish a procedure for taking into account Tribal Sovereignty, Tribal Water Rights, and the needs of Tribal communities."

This Rule should operationalize that mandate by requiring Tribal consent before any regional action that affects Tribal resources, Water Rights, or data.

Our Water Rights and resources are not like any other. They arise from time immemorial use, federal law, and agreements between sovereign governments. We are not simply water users, but water managers and water regulators, and the oldest Water Rights holders.

To ensure that Regional Planning supports, but does not undermine these rights, this Rule must include a clear mechanism for Tribal consent before any action is taken that would impact a Pueblo or Tribe.

Second, the Rule must require

engagement with Tribes and with WSTAC as defined in meaningful stages of the planning process. Consultation should not be a one-time notice or a general invitation to Comment, it must occur at the beginning of the planning process before any Draft plans are finalized, and again before any plan is submitted to the Commission for approval.

Consistent with WSTAC's recommendation engagement should occur at 3 defined stages:

Planning initiation, before publication of any Draft plan and before submission of the final plan to the Commission.

Each plan should include a written summary of Tribal Comments, Agency responses, and any unresolved concerns. Without this structure Tribal participation risks being symbolic rather than substantive.

Third, I want to focus on Regional boundaries, particularly the need for distinct Planning Regions

that reflect existing Water Right Settlements:

For the Pueblo of Acoma the issue is urgent and grounded in decades of experience. The Rio San José Basin is among the most water-stressed in the State. For generations upstream Groundwater development has diminished the flow of the Rio San José to a fraction of what once sustained our lands, our people, and our fields.

Compounding this is the reality of decades of contamination from uranium development, which has now seeped into the aquifers that feed the Rio San José.

Over the past several decades Acoma, Laguna, the Navajo Nation, the cities of Grants and Milan, local Acequias, the United States Government, and the State of New Mexico have worked tirelessly to negotiate the Rio San José Indian Water Rights Settlement. This Settlement is not just a legal agreement, it is, in every practical

sense, a Regional Water Plan.

It is the result of detailed studies of basin hydrology, necessary water infrastructure, and the allocation and management of every available drop. It establishes the administrative procedures, funding mechanisms, and coordination processes among all the governments and communities in the basin.

In short, the Rio San José Settlement represents that Rule to seek to create a Regional Water Plan built on science, consensus, and cooperation.

For this reason the Pueblo of Acoma urges the Commission to adopt a distinct Rio San José Settlement Region in the Final Rule. This Region should correspond to the 2 hydrologic Unit Code Sub-basins that define the Rio San José system and the geographical scope of the pending federal Settlement legislation creating a smaller Settlement Base Administrative Region that will allow planning efforts to

align with the legal, hydrological, and government realties of the Rio San José Basin. It will ensure that the Regional Planning priorities and the funding decisions directly support the implementation of the Settlement and uphold the State's commitments.

Larger administrative Regions like the one currently proposed on the Upper Colorado, or the Region that stretches from Laguna Pueblo all the way to the Four Corners, that Region cannot adequately develop a Regional Water Plan that addresses the specific conditions and needs of the Rio San José Basin.

Fourth, and more broadly, the Final Rule must explicitly require Regional Councils to recognize and prioritize Indian Water Right Settlement projects.

The implementation of these Settlements is not optional. They are binding agreements that define how water can be managed, shared, and

developed for decades to come. Each Settlement reflects years of negotiation, scientific study, and intergovernmental compromise.

Section 72-14a-4C(9)(b) of the Water Security Planning Act directs the Commission to provide statewide objectives that include compliance with interstate compacts, the Federal Endangered Species Act and congressionally authorized Tribal Water Settlements Act. To comply with that statutory requirement Section 19.25.16.14 and 19.25.16.15 of the Rule should require Councils to identify and prioritize all Projects, Programs, and Policies that support the implementation of the federally approved Indian Water Rights Settlement.

When a Settlement defines how water is to be managed in a basin, the State cannot treat it as just another stakeholder to a plan. It is a binding instrument of law and the Regional

Water Security Plan must be built around it.

The Pueblo of Acoma asks the Commission to make this principle explicit in the Final Rule Report so that these statutory obligations are fulfilled through the Regional Planning framework.

Finally I want to emphasize that the Pueblo of Acoma supports the broader goal of this Rule to bring all of New Mexico's communities together to plan for a secure and sustainable water future, but water security cannot come at the expense of Tribal Sovereignty, or by overlooking the decades of work, collaboration, and compromise that Indian Water Settlements represent.

Pueblos and Tribes are already defining the legal and hydrologic framework of many basins, and Regional Water Planning has to incorporate this reality. As such, the Pueblo of Acoma also supports the continued role of

WSTAC as a permanent advisory body to review and strengthen the implementation of this Rule.

Thank you for your time and consideration.

I also want to make sure that the Commission knows that I will be leaving the Written Testimony that I just gave along with the exhibit that shows the boundaries that we were talking about. Thank you very much.

HEARING OFFICER ORTH: Thank you, Governor.

Other Commissioner questions of Governor Riley.

Commissioner Suina.

EXAMINATION

BY COMMISSIONER SUINA:

Q. Thank you, Governor Riley, for your Comments.

I wanted to see if, as appropriate, can you share or maybe elaborate a little bit further why it's so important, as you stated in your

verbal Testimony, to have the consent documented from the Governor of the Pueblo of Acoma in terms of how the Pueblo sees your role in terms of authority?

A. BY GOVERNOR CHARLES RILEY: The Pueblo Governors view...

We are a Sovereign Nation, and so this is a Government-to-Government relationship much like the State has with the federal government.

We do not have treaties at the Pueblos. Our Sovereignty was recognized first by the Spanish Government, then the Mexican Government, and then the United States Government. Any type of interaction is not 2 Departments or 2 agencies sitting down and talking, it is a true Government-to-Government relationship.

In that sense, being the Governor of the Pueblo of Acoma, as with much of my fellow Governors and Tribal leadership, you have to sit down with the Tribe in order to maintain and

recognize and fulfill that Government-to-Government relationship.

Q. Thank you, Governor.

I think, along those lines in your statement, you talked about a written summary of critical points along, say, the process in those 3 critical milestones. Why is it so important to have a written summary or response from the Councils or even the State? Why is that so important?

A. BY GOVERNOR CHARLES RILEY: It's important that we document what we say and that we live up to those promises or compromises, or whatever it may be. Too many times in the past we do things verbally, and then it's forgotten.

If we can document our concerns and summarize it, sit down and come to an agreement, that's a much better way of doing things than saying, "I think this is what he said," or, "I think this is what was meant." If we can document explicitly what needs to happen and what we do going forward,

that's a much better process for us to follow.

Q. Thank you, Governor Riley.

If you would share, as appropriate, as you said in your statement, considerations not just about water quality, or I mean water quantity, but also water quality. Can you speak a little bit more on how the Pueblos, since time immemorial, have stewarded the resources of water and how important it is, both water quality and quantity, and what you know and what's appropriate to share in this context?

A. BY GOVERNOR CHARLES RILEY: The Pueblo of Acoma is agricultural-based as most Pueblos are. We have farmed for years, dry farming. We've captured water and we have sustained our fields.

When I expressed how water-short the Rio San José Basin is, it is a reality. I remember, as a young man, going down to the Rio San José and you could swim in it. Now you can wade

across it ankle deep. Historic flows were anywhere from 16 to 17 CFS. The last time when I checked the stream gauge, which was a few months ago, it was 1 and a half. That was due to a lot of mining that took place in the area, and a lot of dewatering.

Not only does that affect our livelihood, it has already affected our livelihood. Any misappropriation, or not taking into consideration the Water Rights Settlement that is in place that we've all worked out, it jeopardizes future generations of our people.

I remember a time in the City of Milan or the Village of Milan just west of there, where the road to the mines that are out there -- and right now it is being remediated -- it was all agricultural.

I mean there was no such thing as child labor laws back then. My older brother and my older sisters and I, they took us out. I was too

young to pick, but my 2 older sisters and my older brother did, and they picked peas, strawberries, and carrots.

That whole area was agricultural. I think it was, at one time, noted to be the carrot capital of the world, and now there is nothing. The ground is too contaminated and there is not enough water. The water that's there is contaminated.

That's why it's so important for our basin not to be included in such a large basin, or larger Region, because of how short the available water is. If we compromise that, like I said, then we compromise future generations.

Where are we going to get our water from? There is no more water. It's been over-appropriated for years and years and years.

Q. Thank you, Governor Riley.

COMMISSIONER SUINA: That's all I have.

HEARING OFFICER ORTH: Other

Commission questions.

All right. Commissioner García.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you, Governor Riley, for your very powerful Testimony here today.

I really appreciate what you were saying about Tribal Sovereignty and meaningful participation, and the concern about being outnumbered on the Council, and how you have to have a process to have this consent. I'm very sensitive to that and appreciate that you have brought that forward, because I think if there is really going to be Government-to-Government, that's very important.

Could you elaborate a little bit on what that consent would look like?

I think you touched on it with the 3 phases and what would be

required, but do you have specific recommendations how this Rule, or this Draft Rule could be changed?

I haven't seen the Written Testimony yet, but is there a specific recommendation how that's integrated into the Rule as it is now in Draft?

A. BY GOVERNOR CHARLES RILEY: You know, the review of any proposed Project is vitally important to the Pueblo of Acoma again because of how water-short this basin is and how it affects it.

We would like to see any of the planning, or any of Draft plans so we can Comment on them.

One of the reasons I brought the boundaries up is because the Rio San José Basin, the Region that it's in is incorporated into the San Juan basin. There is no hydrological connection there, none. There is just no way for the water from the Rio San José Basin to reach the Rio San Juan.

That's why we are concerned

about reviewing any plans and making sure that we have got a voice, and making sure that we make a difference in anything that we say or any Comments that we make simply because in such a large basin, when we have a Water Rights Settlement, the only thing that's left is for Congress to act on it and we don't want anything to jeopardize that.

We have consent, or not "consent," but agreement from Laguna, Acoma, City of Grants, and the City of Milan, all the surrounding water users in that basin. It would just be devastating if anything would compromise that water Settlement.

Q. Thank you, Governor.

I think what I hear you saying about the Settlement is that we don't want...

What you're saying is you don't want a Regional Water Planning Council or process to supersede what you have already agreed to, and it's

binding in the Settlement that's been developed for years and decades with many stakeholders. I understand that, even as they are called in "new Water Rights Settlements," they are actually beneficial or agreed upon by multiple stakeholders such that, in essence, they become a plan.

A. BY GOVERNOR CHARLES RILEY: That is correct.

Q. Because of the way you're engaging, reviewing data, and having participation, I think that's a really valid point.

If I heard you correctly, what you're suggesting, Governor, is that the Rule, rather than implementing it the way it is outlined now, proposing that the boundaries of the Settlement be an actual Region means there is no confusion about getting mixed in with any other decision-making and differently defined boundaries.

A. BY GOVERNOR CHARLES RILEY: Right.

COMMISSIONER GARCÍA: Okay.

Thank you, Governor.

HEARING OFFICER ORTH: All right.

Commissioner Suina.

COMMISSIONER SUINA: Thank you, Madam Hearing Officer.

I apologize again, Governor Riley, for asking one more question:

FURTHER EXAMINATION

BY COMMISSIONER SUINA:

Q. I'm just trying to frame it in a respectful way:

Can any other Pueblos, or persons, or a Tribe speak on behalf of Acoma without Acoma's consent?

A. BY GOVERNOR CHARLES RILEY: No. In a very short answer, no.

If somebody is going to make a public statement about Acoma, it has to come through Acoma. In some cases it has to be -- what's the word -- sanctioned by the Council, especially when it comes to the Water Rights Settlement.

Q. And is that in alignment with what's known as like Tribal Sovereignty and that ability for a Pueblo or Tribe to make those designations or decisions?

I just want to clarify; is that what that's in reference to?

A. BY GOVERNOR CHARLES RILEY: That is correct.

COMMISSIONER SUINA: Thank you, Governor Riley.

HEARING OFFICER ORTH: Other Commission questions?

No.

Thank you very much, Governor.

GOVERNOR RILEY: Thank you very much.

Who should I leave this with?

HEARING OFFICER ORTH: With Anne.

GOVERNOR RILEY: Thank you very much.

HEARING OFFICER ORTH: If there is someone else with a time constraint I'm happy to take them.

Next on my list would be

Lieutenant Governor Jojola.

Good afternoon.

LT. GOVERNOR CHARLES JOJOLA: I will say good afternoon, Chairman Sanchez, Commissioners, and hearing Officer. My name is Charles Jojola, currently serving as Lieutenant Governor for the Pueblo of Isleta.

LT. GOVERNOR CHARLES JOJOLA, after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY LT. GOVERNOR CHARLES JOJOLA: I am honored to appear before you today on behalf of our Governor and our Tribal Council and the people of Isleta to share our Comments on the Proposed Rule for Regional Water Security Planning.

The Pueblo of Isleta is located 15 miles south of Albuquerque at the heart of the Middle Rio Grande. Our community has stood here for

centuries, long before New Mexico was a State, or the United States was a nation. Our lands stretch from the Manzano Mountains to the Mesa country along the Rio Puerco, encompassing over 300 square miles.

For generations the Rio Grande has sustained our way of life. It provides water that nourishes our fields, our traditions, and our people.

To us the river is sacred; it is alive. It has a spirit and purpose that go far beyond what can be measured in cubic feet per second. Yet over time it has been reshaped and diverted in ways that have not always respected those who have lived with it the longest.

The Rio Grande Compact divided the river among 3 states, but left no share for the Pueblos. Even today our Water Rights are only partially recognized and limited to certain prior and paramount uses defined nearly a century ago. Meanwhile we see our

aquifers declining, our river channels shrinking, and our climate growing hotter and dryer.

Scientists tell us flows in the Rio Grande may fall by as much as 25% in the coming decades. That's not just a statistic for us, it is a warning that we must plan for the future.

Isleta, along with our sister Pueblos in the Middle Rio Grande Basin, have been working closely with the State of New Mexico and the United States to negotiate a Settlement of Pueblo Water Rights. This Settlement that is still under development will resolve longstanding legal questions and create a framework that benefits all water users Tribal and non-Tribal alike.

It is critical that the Regional Water Security Planning process be structured to support -- not complicate -- that effort. We recognize and we appreciate the

Commission's work to implement the Water Security Planning Act and to establish the Water Security Tribal Advisory Council, also known as WSTAC, and its intention to strengthen water planning across New Mexico. The Pueblo of Isleta fully supports the Written Comments and recommendations submitted by WSTAC to reflecting the collective voice of New Mexico's Pueblos, Tribes, and Nations.

However, to meet the Act's goals to protect Sovereignty, honor federal law, and ensure lasting water security, the Rule must go further. Let me touch on 3 key areas where revision is most needed:

First, Tribal representation and decision-making:

The Proposed Rule provides for Tribal representation on Regional Water Security Councils. We appreciate that inclusion, but representation without balance is not enough. When Tribal members can be out-voted by

other interests, counties, cities, or irrigation districts, it does not reflect true Government-to-Government participation.

Decisions made by these Councils can have a real and lasting consequence for Tribal water lands and data. For that reason any decision that affects the Pueblo, Tribe, or Nations, must require that community's consent.

Sovereignty cannot be subject to a simple majority vote. Constant ensures that collaboration proceeds in a respectful and lawful way. It also prevents the conflicts that arise when decisions are made without Tribal resources and without Tribal agreement.

Second, meaningful engagement at defined stages of the planning process:

The Proposed Rule mentions consultation, but it does not specify when and how that consultation must occur. Without clear requirements

consultation can too easily become symbolic rather than substantive. We urge the Commission to require engagement with the Water Security Tribal Advisory Council and affected Tribes and Pueblos at 3 critical points:

The first one, at the start of plan development when the framework is being shaped;

Second, before a Draft plan is released for Public Comment; and,

Third, before the plan is submitted to the Commission.

Each plan should also include a summary of Tribal Comments and responses to those Comments, and any resolved issues. That transparency is what builds trust and accountability in the process.

Third, the Regional boundaries and the Subregion framework:

The Pueblo is very concerned that the current regional boundary for

the Middle Rio Grande Council includes both the Middle Rio Grande and the growing areas to the north. For decades water in the Middle Rio Grande Valley has been moved upstream to satisfy demand to the north, which causes increased depletions and adversely impacts water supply and the environment.

The Middle Rio Grande is already over-allocated, and cumulative upstream transfers add new depletions that exacerbate scarcity. Pueblos hold Senior Unqualified Water Rights, both consumptive and nonconsumptive, that risk impairment when junior upstream depletions are approved.

The water quality of the river may also be adversely affected by these transfers, limiting the Pueblo's ability to use the water. When irrigation acreage is dried up, the seasonal return flows that sustain drains, Acequias, and habitat are lost. Transfers convert Surface

Rights into Groundwater pumping or other Surface Water Diversions that are not subject to the same curtailment rules, effectively firming up Junior rights.

Surface Irrigation Rights typically have a limited power of use, often only the seven-month irrigation season and deplete the water only during that time. When those rights are transferred to municipal Groundwater uses the depletion becomes year-round, diminishes water flows, and lowers water tables from increased Groundwater pumping harming cultural valleys, the Bosque ecosystems, and endangered species recovery.

It is critical that the Pueblo and other water users between Cochiti and Elephant Butte Reservoirs have the ability to protect the water in the Middle Valley. The current regional boundary will hamper that ability because its groups our communities within the very interests that have

been draining water from the Valley for decades.

For these reasons the Pueblo urges the Commission to revise the boundary of the Middle Rio Grande Council so that it follows the proposed Adjudication boundaries for the Middle Rio Grande. At a minimum the Commission should carve out the northern areas consistent with an approach taken in the previous Regional Water Planning effort with the Jemez y Sangre Region. Aligning the boundary in this way will better reflect hydrologic reality, protect existing users in the Middle Valley, and ensure that the Regional Planning process supports, rather than undermines sustainable water management for all communities along this stretch of the Rio Grande.

In conclusion the Pueblo of Isleta deeply values its partnership with the State of New Mexico and the Interstate Stream Commission. We share

the goal of creating a fair and forward-looking water security framework for our State. This Rule will only succeed if it fully incorporates the principles of Tribal Sovereignty, consent, and meaningful engagement.

The Pueblo respectfully urges the Commission to strengthen the Final Rule by requiring Tribal consent for decisions that affect Tribal water, land, and data, and define clear stages for consultation and documentation, outcomes, and redrawing Regional boundaries to ensure that the Middle Rio Grande Region can effectively protect water sources, ecosystems, and cultural valleys.

The Rio Grande is more than water; it is life itself. Our duty is to protect it together with wisdom and respect. The Water Security Planning Act gives us an opportunity to do that in a way that honors all of New Mexico's communities, including its First Peoples.

Thank you Chairman Sanchez and Commissioners, for your time and continued partnership with the Pueblo of Isleta.

HEARING OFFICER ORTH: Thank you, Lieutenant Governor.

Are there Commission questions?

No.

Thank you very much.

I'm sorry; Commissioner Suina.

COMMISSIONER SUINA: Thank you again, Lieutenant Governor.

GOVERNOR CHARLES RILEY: You're welcome.

COMMISSIONER SUINA: And thank you, Madam Hearing Officer.

EXAMINATION

BY COMMISSIONER SUINA:

Q. I was just wondering if you know whether the Isleta Pueblo has treatment as a State for water quality.

A. BY LT. GOVERNOR CHARLES JOJOLA: Yes, we do. We have pretty much

stricter regulations actually than the City of Albuquerque itself does.

I know this summer we had quite a lot of problems with E. coli within the Rio Grande, and that was because there was no flow in the river. The only flow that we were getting down to Isleta was through the drainage ditches on each side of the river, and we had a real problem with E. coli and with what water was in the Rio Grande.

The only water that was flowing through the Rio Grande was water that was being released by a treatment facility in the South Valley. That's the only water that was flowing into Isleta.

We do have a stricter requirement than the City of Albuquerque itself does.

You know, in prior years we were able to use the water whenever it was required for all of our Ceremonies, and now we can't use it at all. We

have to find other means of acquiring our water to use for our Ceremonies, so we see a big problem with the water flowing down to our Pueblo.

Q. Thank you, Lieutenant Governor.

With that, is it important for the Pueblo of Isleta to maintain your time immemorial uses, using water from the source and from the rivers and streams and the water from the environment?

A. BY LT. GOVERNOR CHARLES JOJOLA: Yes, it is.

You know, our ancestors, when they first located to our current Pueblo, that's the only means that they had for use of water, which was from the Rio Grande. You know, that's until today, and that's still our wish. Because of the condition of the river water we are no longer able to utilize the river as we should be using it.

Q. Thank you, Lieutenant Governor.

Has the Pueblo of Isleta been

involved in other planning processes even beyond the Middle Rio Grande Region in terms of the availability of water for the Pueblo of Isleta?

I think I'm talking about the upper Region of the Rio Chama where the Pueblo's water is being stored.

A. BY LT. GOVERNOR CHARLES JOJOLA: Yes. Yes, we are.

Q. I guess I would ask a similar question:

Can anybody else speak on behalf of the Pueblo of Isleta? Does anybody else have that authority other than the leadership of the Pueblo of Isleta?

A. BY LT. GOVERNOR CHARLES JOJOLA: As was stated by Governor Riley, it has to come through Tribal administration and Tribal consult for that.

COMMISSIONER SUINA: Thank you, Lieutenant Governor.

LT. GOVERNOR CHARLES JOJOLA: Yes, you're welcome. Thank you everybody.

HEARING OFFICER ORTH: Next is

Commissioner Chavez.

EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. Lieutenant Governor, you mentioned the Middle Rio Grande boundary or Council does not fit your needs. The new Proposed Rule with the Subregions, does that meet some of your concerns?

A. BY LT. GOVERNOR CHARLES JOJOLA: Yes, it does. That one will or that part will, so...

COMMISSIONER CHAVEZ: Thank you.

HEARING OFFICER ORTH: And Commissioner García.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you, Lieutenant Governor Jojola; I really appreciate your Testimony today.

In following up on the question by Commissioner Chavez in terms of the boundaries, I'm familiar

with the Jemez y Sangre boundary that you're referring to. Are you also suggesting, similarly to Governor Riley of Acoma Pueblo, that the boundary be explicit in the Draft Rule that we're looking at?

A. BY LT. GOVERNOR CHARLES JOJOLA: Yes, yes, we are.

Q. Okay. Thank you.

I really appreciated your description of the impact of surface to Groundwater transfers.

Also the Government-to-Government relationship that you're describing is especially important given the urban areas. You're in a part of the State with some of the biggest urban areas.

A. BY LT. GOVERNOR CHARLES JOJOLA: Yes.

Q. Can you elaborate a little bit on how being in a very urbanized region could impact the Pueblo if there isn't Government-to-Government meaningful consultation because of that particular

threat?
A. BY LT. GOVERNOR CHARLES JOJOLA: Yeah, well currently, you know, Albuquerque being the largest city and being upstream from where we live, our main concern is all the homeless people that are living in Albuquerque, you know. They have no place when it comes to, I guess I could say, using the restroom. All that flows down into the drain system and eventually makes its way into the river.

That's, you know, another one of our big concerns. We've stressed it to the County Commissioners in Bernalillo County, but, you know, of course Albuquerque has to resolve that problem with its homelessness. That's, you know, one of our biggest concerns that we're seeing.

COMMISSIONER GARCÍA: Thank you, Governor.

HEARING OFFICER ORTH: All right. We do have several other Commenters to get to. Any other Commission

questions?

Thank you very much, Lieutenant Governor.

LT. GOVERNOR CHARLES JOJOLA: Yes, thank you.

HEARING OFFICER ORTH: Next is Lieutenant Governor Jeff Suina.

GOVERNOR CHARLES RILEY: Good afternoon. My name is Jeff Suina. I am the Lieutenant Governor for Pueblo de Cochiti.

LT. GOVERNOR JEFF SUINA,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY LT. GOVERNOR JEFF SUINA: I am here today on behalf of my Pueblo to provide our Comments to the Proposed Rule being promulgated under the Water Security Planning Act.

Pueblo de Cochiti is one of six Middle Rio Grande Pueblos. We are located the furthest upstream of all

the Middle Rio Grande Pueblos near Cochiti Lake Reservoir. We're a Pueblo of 1700 Tribal members and a land base of 55,000 acres.

Like most of the Pueblos on or near the Rio Grande our Pueblo's livelihood and our cultural survival depends on our ability to use the most precious resource, and that is water.

Our water resource is unique. We're the Senior water users with a time immemorial Priority Water Right, and these need to be taken into account by the Regional Water Security Planning Councils. My Pueblo has to be assured that our Senior Water Rights are protected now and into the future, and must be considered through this Regional Water Planning process being proposed.

The Ad-Hoc Committee comprised of some members of the Water Security Tribal Advisory Council, WSTAC, have provided specific Comments and recommendations to the Proposed Rule

for Regional Water Security Planning 19.25.16 to the New Mexico Interstate Stream Commission in a letter dated September 27, 2025.

Pueblo de Cochiti supports WSTAC's Comments and recommendations; however, we also wish to make the following general Comments:

The Proposed Rule provides for Tribal representation and Tribal engagement. We consider this a requirement of the process that should not be taken lightly by the Regional Planning Councils. There has to be meaningful Tribal engagement and not something where you just check off the box.

Having meaningful engagement with the Pueblos and Tribes demonstrates a true respect for Tribal Sovereignty, and it assures us that the Regional Planning Councils will better understand our concerns and avoid taking adverse actions that negatively impacts our water resource

and might negatively impact our relationships.

It is critical that meaningful engagement occur with all of the Pueblos. Sometimes decisions are made that have unintended consequences, which later become difficult to change.

We also need, in this process, to develop mutual respect and honor legally binding Water Rights Settlement Agreements. There are several Indian Water Rights Settlements in New Mexico that took decades for the Settlement parties to negotiate.

Pueblo de Cochiti does not have a Water Rights Settlement Agreement, but if we intend to negotiate in the future, we definitely will want to know how future Water Rights Settlements will be considered in the Regional Water Plans.

We recognize and appreciate the New Mexico Interstate Stream

Commission's commitment to implementing the Water Security Planning Act, and for holding this hearing and listening to my Testimony. We hope for continued collaboration and recognition of our Tribal Sovereignty and consideration of our Pueblo's water needs. Thank you.

HEARING OFFICER ORTH: Thank you, Lieutenant Governor.

Commission questions.

Commission Suina.

COMMISSIONER SUINA: Thank you, Lieutenant Governor.

EXAMINATION

BY COMMISSIONER SUINA:

Q. Would you be able to share an example of a project, a water project, that impacted the Pueblo in terms of water use or --

A. BY LT. GOVERNOR JEFF SUINA: So which one do you want me to...

Q. Right. Right.

Why is it so important, in

that example that you will share, that the Pueblo be consulted and that there be consent?

A. BY LT. GOVERNOR JEFF SUINA: Over the past 50 years, even, you know, going longer, one of the foremost projects that impacted the Pueblo de Cochiti community in many ways was the Cochiti Lake Reservoir. This was a project that was done without consultation, which was enacted under the guise of Public Safety and for the greater good.

This is actually, to this day, a close and heartfelt situation because we see the height of the dam every day. Some of the pictures that we have that I've browsed over during my time as Lieutenant Governor show the Pueblo in the 1930s, in the 1940s, and there is no dam there. You know, I often wonder how our lives would all be affected if that dam wasn't there.

We often jokingly call it "That damn dam." It's affected us in

every way imaginable and it's distorted our land. It's affected our culture and our identity for the worse.

All this was done under the guise of, you know, first for the common good, you know, shortly after we refused initially. Those overtures started to become threats to our Sovereignty, you know, and threats of Condemnation until the dam was, you know, finally constructed.

We're living with those consequences today, you know, and as that project has existed, we are finding more and more collateral damage and consequences of that dam being in place.

We wonder often, you know, what was the true intent for creating that structure, you know? Was it for the common good? Was it for, you know, flood control, or was it, you know, for containing sediment and other types of contaminants from upstream, namely Los Alamos Lab.

You know, to this day, you know, we have this sense of dread in wondering is our water even safe to drink, you know?

And mind you, you know, that that why history has taught us to be very, very careful and very, very hesitant, and frankly distrustful, because we have lost most of our land and most of our culture because of similar projects like this.

You know, my Testimony is a heartfelt plea for Government-to-Government interaction and for collaborative and productive conversation so that this doesn't happen again not just to us, but to everyone who holds water dear to them. Thank you.

Q. Thank you, Lieutenant Governor. I think, you know, it's painful.

A. BY LT. GOVERNOR JEFF SUINA: It's painful.

I mean I think we come from the same generation. It's real hard

for me to not get emotional about it because I think we were born within that window where we have no memory of how it existed before, but our older Sisters and our Uncles definitely remember it.

I often think, "What did we miss out on?" There is just a lot of emotional, you know, things that, you know, go into, you know, talking about Cochiti Lake.

I could go on for days. I could provide all the Testimony you would like, but that would sidetrack from what we're here today for.

Q. Thank you for that, Lieutenant Governor, and thank you for having the courage to provide that example to the Commission.

Also maybe in the same vein that I've asked the previous leadership, could anybody else speak on behalf of the Pueblo and have that authority to give consent other than the leadership?

A. BY LT. GOVERNOR JEFF SUINA:

Pueblo de Cochiti is a Sovereign Nation that has a traditional way of leadership. Our Governors are appointed by our traditional leaders on an annual basis.

Myself, the Lieutenant Governor, and Governor Herrera, are given the authority to act as a voice not only for the people, but also for the Tribal Council. No one else can speak for the Tribe on those matters.

And so like some of my other Brothers mentioned from other Pueblos, if it does not come from myself or the Governor, it is not official or sanctioned by Pueblo de Cochiti.

COMMISSIONER SUINA: Thank you, Lieutenant Governor.

Thank you, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you.

Other Commission questions.

No.

Thank you very much, Lieutenant Governor.

LT. GOVERNOR JEFF SUINA: Thank you.

HEARING OFFICER ORTH: Do we have a representative from San Felipe?

Governor Sandoval.

GOVERNOR MICHAEL T. SANDOVAL, after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY GOVERNOR MICHAEL T. SANDOVAL: If I may, please:

(Speaking native language.)

Good afternoon, Chairman Sanchez, Commissioners, and Hearing Officer:

My name is Michael T. Sandoval and I am a member of the Pueblo of San Felipe. I have served as a Governor for my community and my people.

I have a lifetime commitment to the Tribal Council. Once serving as a Governor, our traditional and

cultural values puts you in that position as a lifetime commitment.

With that said, it is my honor to speak to you today on behalf of the Pueblo regarding the Proposed Rule for the Regional Water Security Planning.

(Speaking native language).

Today the Pueblo of San Felipe lies at the foot of Black Mesa along the Middle Rio Grande. We are a Sovereign Pueblo Nation that has lived beside this river since time immemorial. Our ancestors have relied on our waters for Ceremonies, for agricultural, and for life itself.

For us, the river is not merely a resource, it is a living being and part of the natural and spiritual order that sustains our people.

Over the last century the river has changed in profound ways. It has been divided. It has been dammed up and constrained with decisions that

often overlooked or excluded the Pueblos.

The Rio Grande Compact divided the waters of the river among the 3 states, yet none were reserved for the Pueblos, who are the most Senior users of the river.

Our Water Rights remain only partially recognized, limited to certain agricultural and domestic uses that Congress acknowledged nearly 100 years ago. Meanwhile our shared aquifer continues to decline.

A warming climate brings greater uncertainty. The science tells us to expect a 25% reduction in river flows within the next 50 years. For a desert people whose lives depend on the river, these are not abstract distractions or statistics, they are existing realities.

The Pueblo San Felipe today, with the other Middle Rio Grande Pueblos, our Sister Pueblos, have been working with the State of New Mexico

and the United States to negotiate a comprehensive Settlement of our Water Rights. This Settlement will bring clarity not only to the Pueblos, but for our non-Tribal communities, farmers, and the environment also. For that reason it is essential that the Regional Water Security Planning process in our basin be designed from the outset to accommodate and integrate the terms of that Settlement.

We appreciate the Interstate Stream Commission's commitment to implementing the Water Security Planning Act and supporting the Water Security Tribal Advisory Council, or WSTAC, and strengthening New Mexico's overall planning. The Pueblo of San Felipe fully supports the Written Comments and Recommendations submitted by WSTAC, which reflects the unified position of the New Mexico Pueblos, Tribes, and Nations.

However, to truly fulfill the intent of the Act, and to respect

Tribal Sovereignty, uphold federal laws and secure the State's water future, the Proposed Rule must be strengthened in several key areas, and I will focus on 3 of them:

The first one will be the boundaries themselves, the original boundaries. The Middle Rio Grande is already over-appropriated. Each new upstream transfer compounds that imbalance and draws more water from an already strained system. The Pueblos in the Middle Valley hold Senior Unquantified Rights, both Consumptive and Nonconsumptive, that are placed in jeopardy.

When Junior users upstream are extended, these transfers not only reduced the quantity of the water available to those users, but can also degrade water quality, further limiting the Pueblo's ability to use the river for cultural, agricultural, and domestic purposes.

The Pueblo of San Felipe is

definitely concerned that the proposed Regional boundary for the Middle Rio Grande Council combines the Middle Valley with water-thirsty areas in the north. This configuration ignores both hydrologic and legal realities, and risks repeating decades of patterns in which water from the Middle Rio Grande Valley is transferred upstream to meet development demands.

Those transfers have steadily increased, and those depletions have reduced flows to the water supply and ecosystem upon which our communities depend. When farmlands in the Middle Valley are dried up, the network of drains, Acequias, and riparian areas that rely on the seasonal flow are also lost.

What was once a balanced use of Surface Water becomes a year-round depletion when irrigation rights are converted into municipal Groundwater pumping, or to Surface Water diversions such that the Groundwater effectively

turns short-season irrigations right into continuous Permit depletions.

The consequences are far-reaching with lower river stages, declining water tables, loss of the Bosque and habitat, and increased stress on endangered species recovery, and greater uncertainty for Pueblos and non-Pueblos alike.

These changes also strike at the heart of the Pueblo's culture where the river's health is inseparable from the well-being of the people.

For these reasons, the Pueblo of San Felipe urges the Commission to rely on the boundaries of the Middle Rio Grande Planning Region such that it follows the proposed Adjudication boundaries for the Middle Rio Grande. At the very least the northern area should be separated out, as was done in the early Regional Planning framework for the Jemez y Sangre Region.

A boundary aligned with the Adjudication will more accurately

reflect the hydrology of the basin, and such alignment with the Adjudication area will be more respectful to the Senior Rights and cultural values of the Pueblos, and provide a more fair and more effective foundation for protecting the water resources of the Middle Valley.

Second is the Subregions and the protection of Tribal interests:

If the Regional boundary for the Middle Rio Grande is not revised, it is critical that the criteria for establishing Subregions be strengthened to ensure the protection of Tribal Sovereignty and Water Rights.

Specifically the Rule should include an additional criteria requiring that each proposed Subregion be evaluated such that the proposed Subregion will facilitate taking into account the original Water Security Program, Tribal Sovereignty, Tribal Water Rights, and the needs of Tribal communities.

Without this additional criteria there is a substantial risk that a Subregion could be designated or rejected without any consideration, but rather it advances this fundamental objective of the Water Security Planning Act. Including this language will help ensure that Subregion designations fully respect the rights, responsibilities, and priorities of New Mexico Pueblos, Tribes, and Nations within the Regional Water Security Planning framework.

Lastly, or the third one is Tribal representation and decision-making power:

The Proposed Rule allows for 1 representative from each Pueblo, Tribe, or Nation with the original Council. That is a positive step, but it is not sufficient. As written, Tribal representatives can still be outnumbered and overruled by other interests. This is not equality and it is not reflective of the Government-to-

Government relationship that the State of New Mexico has pledged to uphold.

Decision-making by these Regional Councils may directly affect Tribal Water Rights, lands, and data. Those are Sovereign matters not subject to majority vote. Therefore San Felipe strongly supports requiring the consent of any affected Pueblo, Tribe, or Nation before a Council can approve decisions that impact Tribal Water Rights, resources, or information.

Consent is not obstruction, it is the exercise of Sovereignty. It ensures that collaboration happens on a foundation of mutual respect.

In closing, for San Felipe the river is sacred. It is our past and our future.

The Pueblo appreciates the Commission's continued dialogue with New Mexico Pueblos, Tribes, and Nations, and we acknowledge the improvements made to last year's Draft. We would, however, respectfully ask that the

Final Rule include the changes necessary to ensure realignment of the original boundaries such that the Middle Rio Grande Region is empowered to safeguard its own water resources and its ecosystem, and cultural heritage.

The Commission should also add the proposed criteria for Subregions, to ensure that Tribal Sovereignty, Water Rights, and community needs are meaningfully taken into account, and that Tribal consent is required for a decision affecting our resources.

If these changes are made, New Mexico will have a framework worthy of its name; a true Water Security Plan that respects the Sovereignty of its First Peoples and secures water for generations to come.

Thank you for your time and the opportunity for me to speak. Thank you.

HEARING OFFICER ORTH: Thank you, Governor Sandoval.

Commission questions.

Commissioner Suina.

COMMISSIONER SUINA: Thank you, Madam Hearing Officer, and thank you, Councilman Sandoval; I appreciate you being here.

EXAMINATION

BY COMMISSIONER SUINA:

Q. Can you, as appropriate, elaborate on the following:

I want to talk about Tribal Sovereignty and consent; can you elaborate on that?

Would anyone else really, outside the Pueblo, understand the internal considerations of water needs, water use, how Pueblo people use the water from San Felipe, and what's appropriate to be shared and how the Pueblo looks at consideration with respect to consent?

A. BY GOVERNOR MICHAEL T. SANDOVAL: Regarding and reflecting religious uses it is not really appropriate for

us, as Pueblo Nations, to speak about those things.

As to the livelihood of our people, that water has always been used for agricultural purposes, because what they put in Mother Earth is what we consume for our lives. That is one reason that we are strongly wanting to hold on to our practices as we farm our lands.

Q. Thank you for that.

In terms of consent, is it, I guess, appropriate to ask this question, maybe -- and I hope I'm asking it respectfully -- of how the Pueblo of San Felipe exercises, through its leadership, you know, the Governor and Council leadership that makes the decisions and has the authority to provide that consent?

A. BY GOVERNOR MICHAEL T. SANDOVAL: All decisions within our government system, the Tribal government system, the final decision lies within the Tribal Council of the Governors.

Q. Thank you for that.

COMMISSIONER SUINA: That's all I have for now.

HEARING OFFICER ORTH: Thank you.

Other questions.

No.

I'm sorry, Commissioner García.

COMMISSIONER GARCÍA: Thank you, Councilman Sandoval. Thank you for your Testimony. It's very insightful and really helps us to understand your core values and where you're coming from. It's very much appreciated.

GOVERNOR MICHAEL T. SANDOVAL: You're welcome.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. I thought perhaps you could elaborate on something that you talked about having an impact on Senior Water Rights and the prior Paramount Rights of the Pueblo:

When there are transfers out of what's considered like the "middle" middle, like to Santa Fe, for example, how does that affect the prior Paramount or Senior Water Rights of the Pueblo when those agricultural Water Rights are transferred to a Groundwater use, and how that affects the river and how that affects agriculture and the cultural uses of the Pueblo?

A. BY GOVERNOR MICHAEL T. SANDOVAL: Bottom line it is the depletion of the Surface Water. When you transfer, and even though you Permit it as Groundwater, it depletes the Surface Water.

Q. In terms of when we see these Councils coming together...

To me, I think that's kind of the elephant in the room of water policy in New Mexico. If we're transferring Water Rights, Surface Water to Groundwater, and you're depleting Groundwater, you're depleting

the water for everybody, so the perspective of the Pueblos I think is really important to capture.

How would the Government-to-Government relationship ensure that your perspective is acknowledged and honored in this planning process?

A. BY GOVERNOR MICHAEL T. SANDOVAL: All the Pueblos really hope, and their expectations are such that we are at the table when it comes down to Government-to-Government consultation. That is what is considered as consultation, and not having to pick up a phone and call the leadership or the administration of each respective community or Pueblos. You have to come to the table and talk to each other face-to-face, and that's how we treat consultation.

COMMISSIONER GARCÍA: Thank you; I appreciate that very much. Thank you.

HEARING OFFICER ORTH: Other questions.

No.

Thank you very much, Governor Sandoval.

GOVERNOR MICHAEL T. SANDOVAL: You're welcome.

HEARING OFFICER ORTH: We're going to take one more Comment today because we do have to exit the auditorium not too long after 5:00.

We will hear Public Comment from Sandia Pueblo Governor Felix Chávez, who has already asked to speak Friday morning.

I believe next will be Josh Mann.

Mr. Mann.

MR. JOSHUA MANN: Hi. Good afternoon everyone.

JOSHUA MANN, ESQ.,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. JOSHUA MANN: My name is Josh Mann. I am Water Counsel for the

Pueblos of Isleta and San Felipe. I am also a member of the Ad-Hoc Committee of the Water Security Tribal Advisory Counsel, or WSTAC.

THE CERTIFIED REPORTER: Excuse me, Mr. Mann. Would you spell your name, please.

MR. JOSHUA MANN: My name is spelled J-O-S-H M-A-N-N.

It's been some time since I've presented before the Commission, and I think the only Commissioner was the Chairman when I was working for the Interstate Stream Commission as a baby attorney, so it's a pleasure to be back before you today.

Before I begin I do want to make clear, and Phoebe has been very good about all of her questions, but I am not speaking on behalf of any Pueblo, Tribe, or Nation. Each Pueblo, Tribe, or Nation is a Sovereign entity unique in its governance, Water Rights, and priorities, and fully capable of speaking for itself.

The Water Security Tribal Advisory Council, or WSTAC, represents an effort to do something that is very challenging, but important, to bring together all the Pueblos, Tribes, and Nations in New Mexico to provide a collective perspective on State Water Planning. The Comments I will reference today should be received in that spirit; as a collective recommendation reflecting broad collaboration and consensus where possible.

It is also important to note that several Pueblos, Tribes, and Nations have elected to opt out of the WSTAC Comments, and that decision should be respected as an exercise of their Sovereignty.

First I want to express my sincere appreciation to the Director of the Interstate Stream Commission, Hannah, and to the ISC Staff, Anne Maurer, Andrew and Katherine, for their commitment to establishing the WSTAC

and supporting its work.

I want to give a special shout out to Laurie Weahkee, who has been extremely helpful and critical in the establishment of the WSTAC, as she is a cat herder extraordinaire.

The resources, time, and respect that the Commission has dedicated to the WSTAC have been critical in building this space where New Mexico Pueblos, Tribes, and Nations can meaningfully participate in shaping the future of the State's water planning framework. Their efforts have been in alignment with the spirit of the Water Security Planning Act, an Act that calls for collaboration, transparency, and respect for Tribal Sovereignty.

The progress made so far demonstrates genuine good faith. That said, the Proposed Rule still needs some adjustments to bring it fully into alignment with that same spirit.

The WSTAC's Written Comments

identify several areas where additional refinements will make the Rule both stronger and more consistent with the letter and intent of the Act. I would like to briefly walk through the key points of those Comments:

The first issue concerns representation:

We have already heard about that from several of the Pueblo representatives today. It concerns representation and decision-making authority on the Regional Water Security Councils.

While the Rule provides for 1 representative of each Nation, Pueblo, or Tribe, it still allows Tribal voices to be outnumbered by other entities. This structure does not yet reflect the Government-to-Government relationship the State has pledged to uphold, nor does it fully protect federally recognized Tribal Water Rights.

The WSTAC, therefore, recommends that the Rule be amended to

require Tribal consent for any Council decision that could affect a Pueblo or Tribe's Water Rights, water resources, lands, or data.

Just to be clear, it is not consent for every decision, it is just for those decisions that affect the Pueblos', Tribes', and Nations' interests.

One example comes immediately to mind that one of my clients has dealt with, and that is Data Sovereignty. For example, if a Regional Council wanted to collect LiDAR data or aerial imagery, or water measurements that was revealing data about Tribal resources. Tribal consent must be obtained in those instances. That is one example, but I am sure there are many, many more.

Amending the Draft Rule to require Tribal consent would ensure that Sovereignty is respected, and that no Regional body can take action affecting Tribal resources without the

agreement of the Pueblo, Tribe, or Nation it has affected.

The second issue relates to when and how engagement occurs, and we have heard about this a little bit already today:

The current Rule calls for documentation of participation, but it does not specify at which stages consultation must take place, nor does it require the Councils to relay when there has been opposition and what steps they have taken to try to remedy that opposition. Without that, engagement risks being procedural rather than meaningful.

The WSTAC recommends that the Rule require engagement at 3 key points:

At the initiation of the planning process is Number 1;

Number 2, prior to the publication of a Draft plan; and,

Number 3 is prior to the submission of the final plan to the

Commission.

Plans should also be required to include a summary of Tribal Comments and responses to those Comments, and document any unresolved Tribal concerns. This approach promotes transparency and ensures that Tribal input is not merely acknowledged, but is actually incorporated into the decision-making process.

The third issue involves Regional boundaries which we have heard about, and how Subregions are treated under the Rule. WSTAC appreciates that the ISC attempted to address concerns about the size and alignment of the proposed Regional boundaries by incorporating this Subregion mechanism. As currently written, however, it doesn't go far enough to reflect the hydrologic, legal, and cultural realities that define Tribal water governance.

There is also a fair bit of ambiguity about how it would be

implemented. In some areas where Indian Water Rights Settlements exist, or are being negotiated, as we've heard with the 6 Pueblos in the Middle Rio Grande, Tribal Governments already have the legal and technical capacity to conduct comprehensive Regional Planning.

These Settlements are not just local agreements; they are acts of Congress and Court Decrees that establish binding frameworks for water allocation and coordination.

For those reasons WSTAC recommends that the ISC establish additional full Planning Regions. One would be the Rio San José Region, as we heard from the Governor of the Pueblo of Acoma, the capital Region like the Jemez y Sangre, and then an Upper Rio Grande Region. The maps of these proposed Regions were submitted to Staff through the process, and can certainly be provided again. Each of these Regions should have independent

authority to develop and submit their own plans.

In addition to that, the WSTAC recommends that the Rule add an explicit criterion for establishing these Subregions and requiring consideration, and quoting here:

> "The proposed Subregion will facilitate taking into account, in the Regional Water Security Program, Tribal Sovereignty, Tribal Water Rights, and the needs of Tribal communities."

Without that language there is a real risk that the Subregions could be approved or denied without regard to whether they uphold the fundamental goals of the Act.

Finally the Rule should explicitly recognize and prioritize Projects and Programs that implement Indian Water Rights Settlements. I know we have heard about that already, so I'll try to be quick:

These Settlements are binding legal instruments that require committed multi-decade infrastructure and funding commitments. While the Rule references Settlement implementation as a statewide objective, the current language is advisory and does not require Regional Councils to document or prioritize these Projects.

To ensure compliance with both federal and State obligations, WSTAC recommends amending Sections 19.25.16.9B, and 19.25.16.14C, and 19.25.16.15, to make sure that Settlement implementation is a required consideration in all Regional Planning processes. This would ensure that the Settlement Projects are consistently identified, tracked, and prioritized in accordance with the Water Security Planning Act and New Mexico's legal responsibilities.

In closing I again want to thank the Commission, the Director, ISC Staff, and Laurie for the respect

you have shown the Pueblos, Tribes and Nations throughout this process.

WSTAC is a model for how Tribal engagement can work when the State provides both structure and support. The Comments and recommendations we have submitted are intended to strengthen, not slow down the Rulemaking process.

By adopting these refinements the Commission can ensure that the Final Rule fully embodies the spirit and purpose of the Water Security Planning Act to build resilient, inclusive, and a legally sound foundation for New Mexico's water future.

Thank you for your time and for the opportunity to speak today.

HEARING OFFICER ORTH: Thank you, Mr. Mann.

Are there Commission questions?

Commissioner Suina.

COMMISSIONER SUINA: Thank you,

Mr. Mann. I appreciate your coming to speak.

EXAMINATION

BY COMMISSIONER SUINA:

Q. I wanted to touch upon one aspect of your verbal Testimony about the example you brought up concerning LiDAR data collection:

Can you elaborate more on how that might be seen as impacting Tribal Sovereignty or affecting Tribal Sovereignty?

Also there has been a lot of discussion about data as well and how that kind of dovetails into maybe Data Sovereignty, and how maybe, with your work, a Pueblo or Tribe would see that as impacting their Sovereignty.

A. BY MR. JOSHUA MANN: Yeah, definitely that would be an infringement of their Sovereignty. They have the right to control all the information and data about their resources, land, water, or otherwise.

There are examples where there is data that's being collected now, and I believe it might be by the Corps of Engineers, but I don't know.

It's interesting because a lot of times it is like a group of entities, and no one entity can tell you "Yes" or "No," and so the data is just being collected.

My client that's being affected by this has not had an ability to make that stop or to pull back that data, so it's critical, with these Councils, that their votes not be outnumbered, you know, on these critical issues that affect Sovereignty, including Data Sovereignty. That is also why consent is so critical only in those instances where the Pueblo's resources are affected.

Q. One more follow-up:

With the recommendations that you shared, as well as, from what I'm reading, the WSTAC recommendations, would it address that consent and that

mechanism in your Comments and yours and WSTAC's proposed revisions?

A. BY MR. JOSHUA MANN: Yes, Commissioner Suina, it would.

Our proposed language does require consent of any affected Pueblo, Tribe, or Nation when there is an issue related to their resources, whether it's their actual resources or data about their resources.

COMMISSIONER SUINA: Okay. Thank you very much.

HEARING OFFICER ORTH: We have come to the end of our court reporting time, and I'm sorry about that.

Thank you, Mr. Mann.

All right. We understand that the Commission has a meeting tomorrow morning and we will resume the hearing is 1:00 p.m. tomorrow. We will begin with Public Comment at that time.

We'll see you tomorrow at 1:00.

MS. BECKER: Thank you, Madam

Hearing Officer.

(The Evidentiary Hearing adjourned at 5:21 p.m.)

WITNESS SIGNATURE/CORRECTION PAGE

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I, PARRY ANDREW ERDMANN, do hereby certify that I have read the foregoing pages of my Testimony as transcribed, and that the same is a true and correct transcript of the Testimony given by me on WEDNESDAY, OCTOBER 15, 2025, except for the changes made.

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DATE SIGNED PARRY ANDREW ERDMANN

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I, SARA M. FOX, P.E. do hereby certify that I have read the foregoing pages of my Testimony as transcribed, and that the same is a true and correct transcript of the Testimony given by me on WEDNESDAY, OCTOBER 15, 2025, except for the changes made.

_____ _____

DATE SIGNED SARA M. FOX, P.E.

STATE OF NEW MEXICO

INTERSTATE STREAM COMMISSION

IN THE MATTER OF PROPOSED NEW Rule 19.25.16 NMAC - Regional Water Security Planning, New Mexico Interstate Stream Commission Water Planning Program.	NMISC NO.: 25-01(R)

BEFORE THE HONORABLE FELICIA L. ORTH

WEDNESDAY, OCTOBER 15, 2025

9:00 A.M.

EVIDENTIARY HEARING VOLUME I

REPORTER'S CERTIFICATE

I, DAVID M. LEE, RMR, CRR, CERTIFICATE NUMBER 50391, NEW MEXICO CCR NUMBER 537, DO HEREBY CERTIFY that on WEDNESDAY, OCTOBER 15, 2025, the Proceedings in the above-captioned matter was transcribed by me, and that I did report in stenographic shorthand the Proceedings set forth herein. The foregoing pages are a true and correct transcription, all done to the best of my ability.

I FURTHER CERTIFY that I am neither employed by, nor related to, nor contracted with (unless excepted by the Rules) any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

DATED at Santa Fe, New Mexico, this 28TH day of OCTOBER, 2025.



DAVID M. LEE, RMR, CCR
New Mexico CCR Number 537
License Expires: 12/31/2025

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STATE OF NEW MEXICO

INTERSTATE STREAM COMMISSION

IN THE MATTER OF PROPOSED NEW RULE 19.25.16 NMAC - Regional Water Security Planning, New Mexico Interstate Stream Commission Water Planning Program.	NMISC NO.: 25-01(R)

BEFORE THE HONORABLE FELICIA L. ORTH

THURSDAY, OCTOBER 16, 2025

1:03 P.M.

PUBLIC COMMENT AND

EVIDENTIARY HEARING VOLUME II

CERTIFIED TRANSCRIPT

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INFORMATION REQUESTED BY COMMISSION

Page Line

Santa Fe, New Mexico
October 16, 2025
1:03 a.m.

HEARING OFFICER ORTH: Good afternoon.

My name is Felicia Orth, appointed by the Interstate Stream Commission to conduct a Hearing In the Matter of the Proposed New Rule 19.25.16 of the New Mexico Administrative Code. This is the Regional Water Security Planning, Docketed by the Administrator as NMISC 25-01.

We are on the second day of Hearing, and this is our third of several opportunities to offer Public Comment.

I do have some folks in the auditorium who have indicated their desire to offer Comment and we'll hear from them first. Then, in the event there is anyone on the platform who would like to offer Comment during the

session, please indicate by raising your virtual hand or otherwise reaching out to the technical host.

If you're in the room and haven't signed the sign-in sheet, please do so and indicate your desire to Comment; no salesmen will call.

The Hearing is being recorded and transcribed by David Lee of Cumbre Court Reporting, and we have the Commissioners arrayed around us.

Ms. Becker, I see you on your feet.

MS. BECKER: Yes, thank you. Madam Hearing Officer; 2 quick procedural matters:

One, I would request a roll call each day so that we can ascertain quorum, and I'll save my second matter until after roll call if I may.

HEARING OFFICER ORTH: Thank you.

Ms. Salazar, would you call the roll, please.

MS. SALAZAR: Apologies.

Chairman Sanchez.

CHAIRMAN SANCHEZ: Here.
MS. SALAZAR: Vice Chair Timmons.
VICE CHAIR TIMMONS: Here.
MS. SALAZAR: Secretary Anderson.
SECRETARY ANDERSON: Here.
MS. SALAZAR: Commissioner Carrasco.
COMMISSIONER CARRASCO: Here.
MS. SALAZAR: Commissioner Chavez.
COMMISSIONER CHAVEZ: Present.
MS. SALAZAR: Commissioner Russell.
COMMISSIONER RUSSELL: Here.
MS. SALAZAR: Commissioner Balok I think may be online, but not right now.
COMMISSIONER SUINA: Yes.
No, I'm sorry; this is Commissioner Suina. Sorry.
MS. SALAZAR: Thank you, Commissioner Suina.
Is Commissioner García online?
Okay. I think not.
I think Commissioner García is on her way, just so you know; she

will be here soon.

MS. BECKER: Thank you. We have a quorum; however, I would ask that it be noted on the record when the Commissioners do appear. That would be helpful; thank you.

Furthermore, Madam Hearing Officer, I wanted to identify that in addition to the Notice that's prescribed in the -- excuse me.

In addition to the Comment that's prescribed in the Notice, I understand that you have a number of persons in front of you that you are seeking to put forward.

I wanted to identify that my third witness, Mr. Chakeres, we're prepared to offer him today, and I do have some time limitations. In fact it would be really helpful if I could conclude with him today due to his double-booking in terms of a speaking engagement at a legal conference tomorrow.

If I could just express to

you it would be very helpful to not only have his Direct, but also, after the questions of the Commission, if I may have additional time with him to be able to address those questions of the Commission such that he may not be available tomorrow. I would sincerely appreciate it.

HEARING OFFICER ORTH: All right. Thank you so much; I will make a note.

All right. Let's move into Public Comment, and I have several names here on the list.

Soledad Dabi García, are you here?

As you approach the podium I'm going to ask every Commenter to spell your first and last and middle name, if that's how you address yourself, and also to state your affiliation, and that's all that I ask.

MS. DABI SOLEDAD GARCÍA: Good afternoon. My name is Dabi Soledad García. My pronouns are they/she.

HEARING OFFICER ORTH: Would you

spell it, please.

MS. DABI SOLEDAD GARCÍA: Yes.

D-A-B-I, second name, S-O-L-E-D-A-D, and then García, G-A-R-C-I-A, with an accent over the "I."

DABI SOLEDAD GARCÍA,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. DABI SOLEDAD GARCÍA: I am here, and I work with the New Mexico Acequia Association. I am the promotora cultural. I work with the New Mexico Acequia Association, and I am the Promotora Cultural,

In addition to that role I'm also a Commissioner with the New Mexico Acequia Commission, as well as an Adjunct Professor jointly in the Departments of Anthropology and Music at the University of New Mexico.

I come here before you today

to talk about water, which our communities believe is sacred and is important in terms of thinking about how water is apart from being thought of as a resource.

I'm going to quote from a preamble that is quite representative of many of our Acequia communities in New Mexico in which they affirm the sacredness of water:

"Water is the lifeblood of our communities. The Parciantes of the Acequias believe that water should be protected as a community resource so that future generations can grow food and have a healthy and secure source of water for needs within the community.

"We seek to promote agriculture by keeping water rights on historically irrigated land. If changes in historic uses of water

become necessary, those decisions should be made through a cultural and spiritual connection to our community and through our own process of self-governance so that these decisions can be made for the common good.

"We honor the ancient customs and traditions embodied in our Acequia and seek to govern our Acequias to continue the connection between land, water, and culture in perpetuity."

I wanted to bring up this particular preamble because it's important in terms of thinking about our connection to water and land, and in particular the notion of culture.

Oftentimes we speak in terms of thinking about governance. I want to, in many ways, commend this group in terms of how it is looking for ways to affirm cultural values, but also in

terms of thinking about cultural sensibilities and how communities govern themselves.

Oftentimes I think the most common thing that people say in terms of their relationship to the water and that we hear in the Southwest and in arid desert communities is that the lands that do not necessarily share the values of the Acequia communities. They always say, "Well water moves uphill towards money."

In many ways it's important to think that in many of our communities, to do the cultural work to understand how culturally our communities utilize water and how they affirm the practices of governance and self-governance, it's important to think about how this approach to culture is not linear.

One of the things that I ask of this body is to keep in mind how, in many ways, we can make substantial changes in the ways we are thinking about that in terms of thinking about

a governance process that is linear.

Oftentimes, you know, I think about the rules, in particular. I will quote this other document that we have provided, or the NMAA has provided about the ISC and the Region overlaps.

The rules need to have, and one of the things about the ISC plan is the rules have to have the 9 Regions overlap and be contained within the Councils of Government.

We are asking that these Comments that are located on page 2 in our supporting documents, it's important that we ensure that there is overlapping technical assistance services such as free Grant writing, planning, Project supplemental services, and also aspects to think about that.

Oftentimes I participated within the ISC planning process in the various charrettes that were done throughout the state, and oftentimes

it's, in very many ways, a linear idea in terms of thinking about drawing ideas from the community, and you build those particular structures outside of the communities that is going to affect them.

In many ways I ask how do you continue to engage community, and how, in many ways, do you extend that particular engagement in that we really need substantive information from communities and also communities that are represented within the bodies that are going to be created.

I think with that, I'm going to come to a close, because I only had 3 minutes. Thank you so much.

HEARING OFFICER ORTH: Thank you, Ms. García.

Serafina Lombardi, if you would spell your names and state your affiliation.

MS. SERAFINA LOMBARDI: Yes, good morning, Madam Hearing Officer.

Actually good afternoon,

Madam Hearing Officer and members of the Commission:

My name is Serafina, S-E-R-A-F-I-N-A; Lombardi, L-O-M-B-A-R-D-I.

SERAFINA LOMBARDI,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. SERAFINA LOMBARDI: I come before you as a mom concerned about water and for our future generations in our State.

I am a Commissioner on the Acequia de los Martinez Arriba in Chimayo, New Mexico. I am also a member of the Executive Committee of our regional Acequia Association Board, which is called the Rio Quemado, Rio en Medio, Rio Frijoles, Rio Santa Cruz Stream System Acequia Association.

I can write it down for you when I'm done, if that would be better.

We are actively engaged doing Regional Water Planning on our Acequia in that basin thanks to support from the New Mexico Acequia Association, which is my day job where I am the Program Director. For almost 13 years I have been there now.

I stand to support the Comments that NMAA submitted before the September 27 deadline, and we provided a printed copy of yesterday.

I want to highlight that those Comments were created by Acequia leaders from across the State coming together multiple times to share their experience and insights with this endeavor to make this as a productive, positive, and impactful Regional Water Planning process for all the Regions of the State.

Two of the items I would like to highlight in those Comments include:

One, the need to form an Acequia and Rural Water Security

Advisory Committee, which would be a statewide forum to ensure that those rural issues are lifted up and acknowledged across the Regions and really supports equity and reaching our underserved communities to engage in this process.

The other item I would like to highlight from our Comments is that there was mention in the Water Security Act of funding which has not carried over into the rules. We would really like to see that lifted up in the Rulemaking process.

Funding to support implementation as able really increases the motivation of the community to engage and understand that there will be an impact from their efforts, and inspires all of us that there will be a beneficial outcome in the end.

With that, I will close my Comments and thank you all for your service.

HEARING OFFICER ORTH: All right.

Thank you very much, Ms. Lombardi.

I forgot to ask the Commissioners if they had questions of Ms. García or Ms. Lombardi. I didn't want to persist in that mistake if you had questions.

COMMISSIONER GARCÍA: I have a question.

HEARING OFFICER ORTH: You do. All right.

COMMISSIONER GARCÍA: Thank you. Thank you for your testimony, and thank you, Ms. García, as well.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Could you elaborate on the funding issue and explain the inequities that rural communities face, or Acequias in particular when it comes to applying for funding when planning for projects, and what kind of resources are needed for assisting those communities who are generally volunteers?

A. MS. SERAFINA LOMBARDI: Thank you for that question, Commissioner García:

As many of you understand and may have experienced, in many of our rural communities, which is where the majority of our Acequias are across the State, not only are Acequias serviced by volunteers, but our Land Grants leaders are serving as volunteers. Our Mutual Domestics are volunteers, and we have very few other local governments to interact with.

We may be in counties that are fairly underresourced, which may be the only, in some places, local government that there is any access to. There are very few mechanisms for formal organizing.

All of the ones that exist, for example, where I live in Chimayo have very little access to funding. Maybe we can get ISC funding for an Acequia infrastructure project, but that's, you know, once or twice in our

lifetimes. There is very little to support us in gathering our ideas, writing them down, and coming to events like this to participate.

In order for these rural communities to have meaningful engagement in this Regional Water Planning process, which is so vital to us and our futures, and we're very engaged stakeholders, we need support. We need support to create opportunities that are accessible and meet the needs of folks driving all the way to Albuquerque, you know, from Chimayo, which is a hardship.

How do we put these locations and times together, whether it's liaisons who can help communities come together, or funding to get support to write down our own ideas?

I could go on, but I need to rein it in. We need funding for every level and for various issues, particularly when it comes to being organized to participate, but then to

have hopes to implement because there are so few resources for us to draw upon.

I hope that answers your question.

HEARING OFFICER ORTH: Thank you.

Other Commissioner questions of either Ms. Lombardi or Ms. García.

No.

All right. Thank you very much.

I believe I indicated to Chili Yazzie that I would accept Comment around 1:20.

If you would spell your name, please.

MR. CHILI YAZZIE: Thank you.

CHILI YAZZIE,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. CHILI YAZZIE: (Speaking native language.)

I give you my greetings to say that (speaking native language) in my language. It means sky, the universe, the heavens is me or I am.

I say to you this morning, or this afternoon, that (speaking native language). I am of the universe; I am a child of the universe.

My name is Chili Yazzie, C-H-I-L-I Y-A-Z-Z-I-E, and I'm from Shiprock.

Principally I work with a farmer collective. We go by our acronym name, which is to be ToohBAA, T-O-O-H-B-A-A. That stands for our full name, which in our language is (speaking native language) Alliance.

We are traditional farmers that farm along the San Juan River. There are 6 river-based farming communities that are served by 2 different irrigation projects. One is the Upper Fruitland Irrigation Project that serves Upper Fruitland, Nenahnezad, and the San Juan Chapter

of the Navajo Nation.

I am in the Hogbak Irrigation Project, which serves Hogbak, or Tse Daa Kaan, Shiprock, and Gadiiahi.

We have 66,000+ acre-feet of water that is reserved for our irrigation needs, and I want to stress 3 things here this afternoon:

One is to accentuate the fact and the reality that the waters that we have are sacred. In my way we refer to water as our holy sacred water.

Water is of a female constituency, so we regard her as our Mother, along with our Earth Mother. Of course The Creator, Father, is represented symbolically by the air we breathe and fire or light.

The greetings I gave in my native language is to pay respect and honor to my ancestors who have lived on these lands, these unceded Tewa territories. My ancestors have been here from time immemorial, and who are

the original stewards of the land that we walk and the waters that we are talking about.

I have position, standing, and authority to come before you today and represent my ancestors and all my relative Tribal peoples across the State, and we do not take lightly any discussion on water.

My expectation is that the recommendations that we give are considered and incorporated into the Proposed Rule that is before you. The one point that I will make in reference to the Rule is I generally support the Rule, but I ask respectfully and humbly that you add on language that will provide access to any discussions of water within your purview into the future for representatives of the rural communities, the farmers and the ranchers who understand water, who know water, and use our precious water in the way that they need to.

In closing, if we do not give

this respect and honor to our sacred waters, and cherish them and protect them and defend these waters for the sake of our grandchildren, all of our grandchildren into the future, we are not worthy of the authority] and stations and positions that we have. Thank you.

HEARING OFFICER ORTH: Thank you, Mr. Yazzie.

Are there Commissioner questions of Mr. Yazzie?

Thank you very much.

Alfredo Montoya.

COMMISSIONER SUINA: Madam Hearing Officer, this is Commissioner Suina. I have a quick question for Mr. Yazzie.

HEARING OFFICER ORTH: Okay.

Mr. Yazzie, if you would please return.

COMMISSIONER SUINA: Thank you so much.

I apologize, Mr. Yazzie, that I'm not there in person, but I have

one follow-up question to your verbal Testimony:

EXAMINATION

BY COMMISSIONER SUINA:

Q. Did you provide any written recommendations in terms of any language change in the Proposed Rules?

A. BY MR. CHILI YAZZIE: No, I have not, but I can and will.

COMMISSIONER SUINA: Okay. Thank you so much for your Testimony, Mr. Yazzie. I appreciate you coming in. Thank you.

MR. CHILI YAZZIE: Thank you very much.

HEARING OFFICER ORTH: Thank you.

Mr. Montoya, if you would state and spell your names and offer your affiliation.

MR. ALFREDO MONTOYA: Madam Chair, members of the Commission, my name is Alfredo, A-L-F-R-E-D-O, Montoya, M-O-N-T-O-Y-A, and I come from the Village of Alcalde.

ALFREDO MONTOYA,

after having been first called,

was examined and testified as follows:

PUBLIC COMMENT

BY MR. ALFREDO MONTOYA: I am the President of the Mutual Domestic Water Consumers Association. Also the President of the Acequia Alcalde, and the President of the Regional Acequia Association entitled Las Nueve Acequias, which is in the Upper Rio Grande River.

I'm also a Commissioner on the New Mexico Acequia Commission, and I'm a Vice Chair of the New Mexico Acequia Association.

I want to thank you all for the opportunity to speak on the Proposed Rules regarding the water security planning:

By virtue of my involvement in all these organizations, Acequias, Mutual Domestics, and also a member of the Sebastian Martin Land Grant, I am aware that there are over 700 Acequias

throughout New Mexico. There are also hundreds of Mutual Domestic Water Consumer Associations or water associations. There are dozens of Mercedes and Land Grants. Almost entirely all these Acequias --

HEARING OFFICER ORTH: I'm sorry, hold on Mr. Montoya; I'm not sure what's happening.

I'm very sorry for the interruption.

MR. ALFREDO MONTOYA: Almost entirely all of these entities are found in rural New Mexico. Together they represent hundreds of thousands of New Mexico residents. Many times they are not represented with important plans like these, the Water Security Act, when they are created.

Almost entirely all the leaders of these Acequias, Mutual Domestics, and Land Grants serve in leadership positions on an unpaid voluntary basis. There are hardly ever any paid Engineers, Hydrologists,

or other professionals that speak on behalf of these entities. The result is the Acequias, Mutual Domestic water systems, and Land Grant citizens' concerns are not taken into account.

In order to give Acequias, Mutual Domestic water associations, and Land Grants a voice I propose that the Proposed Rules include an Acequia and Water Security Advisory Group, or an Advisory Working Group very similar to the Water Security Tribal Advisory Council.

The council would be comprised of rural representatives who are from Acequias, Mutual Domestics, and Land Grants. This group would provide a statewide forum that would provide input to ensure that rural Water Rights, water needs, and viewpoints are considered and incorporated into each region's plan and related activities.

I would like to thank you all for your service as well, and for the opportunity to make a few Comments.

HEARING OFFICER ORTH: Thank you very much, Mr. Montoya.

The Administrator did get an email from Kian Dadras.

MR. ALFREDO MONTOYA: I'm sorry?

HEARING OFFICER ORTH: Kian, K-I-A-N; Dadras, D-A-D-R-A-S. He says Mayordomo Alfredo may or may not be able to mention this on his behalf, but he is repairing backhoes at the moment in Alcalde. He wondered if you would bring up the question of the gutting of carbon capture regulatory market and the effect it has on Parcientes.

MR. ALFREDO MONTOYA: Yes.

This gentleman has approached us with a proposal that would capture carbon as a resource for Acequias to be able to have a revenue stream. We are seriously considering it and taking this proposal into consideration, and I will speak with Kian later on about his proposal.

HEARING OFFICER ORTH: Thank you

very much. We can certainly incorporate his Written Comment into the record.

Are there Commissioner questions of Mr. Montoya?

COMMISSIONER GARCÍA: I have one question.

HEARING OFFICER ORTH: Go ahead, Commissioner García.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Mr. Montoya, thank you very much for being here.

I was wondering if you could explain to the Commission what a regional Acequia association is, because the concept is in the Draft Rule. People that don't work with Acequias on a regular basis might not be familiar with the term or how it's different from an Acequia.

A. BY MR. ALFREDO MONTOYA: Regional Acequia associations are usually representative of a basin. For example,

ours is Upper Rio Grande River, and we have many things in common.

There are 9 Acequias above Española and below the Embudo Land Grant. Other regional associations, for example in Pojoaque, or the Taos Valley Acequia Association, they form because they represent a similar interests or they have a basin that they have in common.

Acequias that organize have a stronger voice as a group rather than individually, and also to share ideas. There is a leadership structure that is formed, and the leaders of these regional Acequia associations represent that area on a statewide basis; for example on the New Mexico Acequia Commission or the New Mexico Acequia Association.

Thank you for the question.

COMMISSIONER GARCÍA: Thank you very much.

HEARING OFFICER ORTH: Other Commission questions.

Thank you very much, Ms. Montoya.

Let's see. Is Gretel Follingstad with us today.

No. All right.

Elaine Hebard.

MS. ELAINE HEBARD: Good afternoon, Chairman.

HEARING OFFICER ORTH: Please spell your name.

MS. ELAINE HEBARD: My name is Elaine Hebard; E-L-A-I-N-E H-E-B-A-R-D.

ELAINE HEBARD,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. ELAINE HEBARD: My history is that I have been involved in Regional Water Planning in New Mexico for 30+ years; the gray hair came from that.

I have a lot of history and recommendations based on that history, starting with the 1994 Regional Water

Planning Handbook, which I helped in developing, and the 2016 version, and so I'm here today.

I'm trying to...

I'm hopeful that some of my Comments you can see from my history. I handed out some Comments, but they came in a little bit late to the portal and they didn't make it into that after the Comment session, so I'm going to be handing them in today, too.

Summarizing them there is really no planning process included in the Rule. I know they are going to be in the guidelines, but from my experience guidelines are things that you can sort of forget, and Rules are much more difficult to forget.

While the "Objective" states that the plans will fulfill lofty ambitions, there is precious little in the Rules as to how that's going to be accomplished.

The Rules call for Programs,

Policies, and Projects, or PPPs to be developed, but they are an end product to a planning process.

Before they can be developed those Regions have to go through a process, and so to be consistent statewide it should be in the Rules. There should be a standardized Template which incorporates water planning principles that begin with each Region stating a vision: "What do you want?"

Then comes the identification of problems, goals, and objectives, and understanding the consequences for not meeting those goals.

How can the needs of future generations be developed without such information? How can a Public Welfare Statement be developed without such information?

Once such steps are taken, scenarios can be developed; weighting, feasibility, cost, impacts, and water savings, before prioritizing those PPPs that will help implement the plan.

Each Region should develop a Water Budget also to be able to show success, and then we can implement it. Rather than Readiness as the prioritization criteria, PPPs should be evaluated as to how they actually implement a plan with quantifiable reductions in water use or improving resiliency.

Implementation also has to be included in the Rules. Plans must include funding mechanisms, monitoring, updated data, Water Budgets, and accountability to ensure followthrough.

It would be worth looking at the 1994 Water Planning Handbook developed between the Water Dialogue and the ISC, which set out the content and analysis which each plan was to accomplish.

A few concerns specifically:

What happened to Adjudication and Priority Administration?

There has been a lot of talk about Active Water Resource Management,

but before you can get to that we have to know who owns what. It's really easy to say, "Ag uses 76% of water, so Ag needs to save 76%." That changes when you talk about the ownership of the right to use the water, so maybe you have to pay people to not use that water. There are other options once you know who owns it.

I would suggest that plans have to consider Water Rights, which should be mapped and modeled so that each Region can see the impact when these various strategies are implemented.

The Water Budget model has to have a spatial component. When you have counties making decisions on this development or that development, this water use or that water use, what are the impacts when we start transferring water?

I can tell you in the Middle Rio Grande those ancient Water Rights right along the river help keep that

river alive and flowing, and ones maybe farther away, not.

You need to take into consideration where those Water Rights are being transferred. Do we like to see the green belt through Albuquerque or the water being used on some of the crops? The habitat? The air cleaning? We need to consider who owns that water.

My second consideration is in 19.25.16.12A(2)(d). Remove:

> "... water advocacy nongovernmental organizations..."

I would suggest leaving them in. Folks like the League of Women Voters may not consider themselves to be environmental groups, but they should be invited to the table.

The third Comment that I have specifically is that the Rule calls for submission of PPPs even if the data is not there to support it. That could create a huge loophole; "Gosh,

we didn't have the data, but here's our list."

That has happened in the Middle Rio Grande. We have a plan with a bunch of lists, but the group never met again and it's on the shelf.

There was mention made yesterday of Subregions of the Rio Puerco and the Rio Jemez, and I would be a happy to answer any questions on that since I was the lead on both the process and the plan.

One thing is money to attend and participate is not limited to just rural areas. We have a problem in the Middle Rio Grande. For example, how can you get folks that are farming and down in small communities to come and participate?

In summary, planning is not a one-time deliverable, it is an iterative process. Planning is to solve problems. The plan must balance water use and the needs of future generations in the Region through an

analysis of the long-term sustainability and cumulative impacts of any proposed project, including an estimate of how long any impact or benefits achieved from a project are expected to remain.

As others have stated the planning Program Rules must provide a clear, high-level framework that defines objectives, responsibilities, and implementation processes. The program set out in the Draft Rules does not do that.

I hope the above suggestions will be considered in making this a better program as we all strive to create a robust and resilient water future. Thank you.

HEARING OFFICER ORTH: Thank you, Ms. Hebard.

Are there Commissioner questions?

Commissioner García.

COMMISSIONER GARCÍA: Thank you, Ms. Hebard. Thank you for being here

and giving some input and your perspective on a planning process.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Could you give an example of a Regional Water Plan where any of these were implemented, or where there was a process of vision and goal-setting and defining problems such that there was some sense of collective buy-in or collective ownership of the outcomes that are happening in the sense that there are different stakeholders in water, so all those perspectives are incorporated?

A. BY MS. ELAINE HEBARD: I can give you 2 real fast, and thank you, Commissioner García and the rest of the Commission:

I don't see how you can do planning without coming together and talking about your values, and talking about what's important and creating that vision.

For the Middle Rio Grande, in the 2004 plan we spent a lot of time getting to know each other and talking about our values. I still have friends from that effort, and we are not politically aligned at all. However we came and shared, and then we talked about how we were going to go forward, and that's incredibly important.

The other example I'm going to give you is within the Subregional Plan, we were meeting in San Ysidro, and the representative from Zia Pueblo -- and yes, I'm honored to say that both Pueblos did participate in that plan -- came and said, "You missed something." That was, as he said, the spiritual and cultural aspects of water, and it wasn't in the Value Statement, and it became Number 1.

And where were we meeting? San Ysidro, the Patron Saint of Farmers. Knowing that lots of people in their own way share those cultural

and spiritual aspects got us to talking about that, and so it became Number 1.

Those are 2 examples of getting together and sharing, and then moving forward. From there we were able to create scenarios and come up with a plan.

I hope that answers your question.

Q. Thank you.

At the risk of asking you to speculate a little bit, what do you think would happen to a planning process if all we have in the Rule is a PPP list without defining shared values and goals, and you have a group of people that have to rank and vote on PPPs? What might happen if there isn't a process that's participatory in defining values?

A. BY MS. ELAINE HEBARD: Well I can tell you what happened in 2016:

Everybody came in with their CIP lists that they turn in and just

handed them in. There was no real evaluation of the cost or the benefit, and so it became a process that had not much meaning and no followthrough.

I think until you actually understand what's going to happen if you implement -- I'm going to pick on the Chair -- aqua storage and recovery. What is the impact of that Region wide? I think without some Water Budget and some discussion on how that comes to pass, just putting that in as a great idea is not going to be a real plan. Who is going to own it?

Q. Thank you. Thank you. I have one more question, but just along those lines it sounds like you're describing it like a laundry list of projects.

One other question I have, is in regard to some very powerful Testimony from various Tribal Governors yesterday and Tribal officials. An issue that came up repeatedly was the concern about the

impact of Water Transfers on the whole of water. Of course they are concerned about prior Paramount Rights, but they are concerned about the Groundwater. Do you see how this plan and Rule can address those types of issues?

A. BY MS. ELAINE HEBARD: (No audible response.)

Q. In other words how do you see the Regional Water Planning process as relevant to addressing those issues?

A. BY MS. ELAINE HEBARD: I think Mr. Chakeres is going to talk about Public Welfare later this afternoon, but I think that's what you're sort of aiming at; talking about your values, and then going forth from there.

But even before you get to public -- I'm sorry; I'm missing your question.

Q. How do some of the Regional Water Plans address some of the Water Rights and Transfers and things like that?

A. BY MS. ELAINE HEBARD: I think you bring those into your model and

into your discussion.

We just sort of kept those off on the side in the 2004 plan because we just didn't have enough information. For us, the MRTC knows exactly who is irrigating, so that should be sort of easy to figure out in terms of who has what rights, and the State Engineer also has a lot of that.

I think you bring those into the model and say, "When we talk about use, we also talk about ownership." Without that connection I think we're just talking about things sort of in concept. "We need to take 76% of water out of Ag and save," or "Save a whole lot of water from agriculture," more so than maybe municipalities.

When you talk about the ownership of the right to use that water, then that discussion changes. You then bring those people into the plan itself because they have a vested interest now.

COMMISSIONER GARCÍA: Thank you.

HEARING OFFICER ORTH: Next we'll go to Commissioner Chávez.

COMMISSIONER CHAVEZ: Thank you, Ms. Hebard.

EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. Quick question:

In your Comments you mention membership or representatives at MRGCD, which straddles 4 counties. They have one membership. The Town or Village of San Ysidro has 200 people, and they have 1 vote. What would you change or how would you address that?

A. BY MS. ELAINE HEBARD: Yes, I probably would consider that in the MRG, since there are so many smaller communities and Mutual Domestics as well. Perhaps you could create buckets for them such that they don't all have to send a representative to every meeting.

Q. Then the second question is did

you review the Regional boundaries and whether they have changed, and do you support that change or that map?

A. BY MS. ELAINE HEBARD: I really understand the reason that those were changed.

In 1997 Socorro County and Sierra County asked the ISC to split -- I think it was a little before that -- off from the MRG because they did not share a lot of values. They felt like they were more Ag rather than urban.

Rio Puerco and the Rio Jemez tried to do that, and they were made a Subregion without any guidance of what a Subregion is, but I think you can help with Subregions and sub-buckets in that regard.

I'm not sure I answered your question either.

COMMISSIONER CHAVEZ: You're fine. Thank you.

HEARING OFFICER ORTH: Next to Commissioner Carrasco.

COMMISSIONER CARRASCO: Good afternoon. Thank you for your Testimony.

EXAMINATION

BY COMMISSIONER CARRASCO:

Q. Quick question:

Your Comment regarding data, I guess I struggle a little bit with how we move forward when Adjudications are 20-, 30-year projects. How do we move forward with planning, and how would you suggest this Rule be changed?

A. BY MS. ELAINE HEBARD: (No audible response.)

Q. You know, it basically says that it will be based on the best current data that we have available. I agree that we're probably never going to have perfect knowledge, but how would you change this portion of the Rule to incorporate your concerns?

A. BY MS. ELAINE HEBARD: I think that one of the sources of data would be the irrigation records for MRGCD

and the State Engineer, for starters, for Water Rights, but you need to bring Water Rights into the discussion.

Water ownership has not usually been dealt with in Water Plans, and so the idea of bringing that forward using whatever right now is available would certainly improve the discussion when we start talking about how we are going to reduce depletions in the Middle Rio Grande, for example.

Q. If I may, Hearing Officer, I have a follow-up question I guess, and that is that you also mentioned, and I believe it was put out as a question of what happened to Adjudication and Priority Administration, and there was some concern voiced by a couple other people who provided Testimony. How do you see that fit into this planning process?

A. BY MS. ELAINE HEBARD: "Priority Administration."

Q. Yes, ma'am.

A. BY MS. ELAINE HEBARD: I think

it is a tool.

You come forward, and let's say, Commissioner, that you own 5 acre-feet. I want 1 acre-foot to do something for the plan and I say, "Well you're using too much water, so it's available." That would be sort of an insult to you.

I think if we bring you in to talk about how you will share some of your resources, then I think we have a better and more robust plan, because I don't see how you do planning without bringing in the ownership of the resource that we're talking about.

COMMISSIONER CARRASCO: Thank you.

HEARING OFFICER ORTH: Go ahead, Commissioner Russell.

COMMISSIONER RUSSELL: Yeah. Thank you for your Testimony. It's very good.

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EXAMINATION

BY COMMISSIONER RUSSELL:

Q. You just finished talking about Priority Administration of water. I'm wondering if the Public Welfare thoughts or the Vision Statements or requirements extend beyond just the availability of water and who owns it, and whether the ability of Acequias to aggregate into some larger group in advocating for themselves, or whether to work on water quality issues might be part of a Regional Plan, and, you know, even bringing up some of the Tribal issues.

The Acequias also talked about of the specialness and sacredness of the water, which certainly isn't in the Priority Administration, and it is not an appropriate value for the Administration, but is it an appropriate value to bring into the discussion as we think about the future of water and the future needs of water? Would that be part of a Regional Plan

to have those kinds of discussions?

A. BY MS. ELAINE HEBARD: Yes, absolutely.

COMMISSIONER RUSSELL: Thank you.

THE WITNESS: That's probably the shortest answer I can give; right? Thank you.

HEARING OFFICER ORTH: Hold on. Commissioner García.

I know Commissioner Suina has some questions, too.

COMMISSIONER GARCÍA: I have one more question.

FURTHER EXAMINATION

BY COMMISSIONER GARCÍA:

Q. You mentioned Water Budgets and water models. Where do Regions typically get those from?

A. BY MS. ELAINE HEBARD: (No audible response.)

Q. Does the State do those for Regions, or do Regions have to get resourceful and go out and find somebody to model it for them?

A. BY MS. ELAINE HEBARD: (No audible response.)

Q. In other words where does that come from and who designs them, and who gets to use them for the planning process?

A. BY MS. ELAINE HEBARD: Great question, Commissioner.

I would hope that that would be in the Rule such that we would have a Water Budget and then how to pay for it.

What we did for the Middle Rio Grande in 2000 is we were able to partner with Sandia Labs and we made what's called a "Mini Water Budget." It really helped because we were able to go up and down the Valley and show people what the impacts were when everybody flushed their toilet and all this water came into the river, but it dropped the Groundwater. That really helped us from the very beginning.

We had a Technical Committee that worked on the Water Budget itself

such that we could put those numbers into the computer model.

I think that everybody could have a fairly basic Water Budget for each Region. It could then be modified depending on what the needs were.

I would hope that it would be something that would be provided by the Rules as a tool to help all of the Regions.

Q. As a follow-up question we had Testimony yesterday from ISC Staff who described the 2 different rounds of Regional Water Planning, and in one case each Region had to collect its own data and hire its own consultants.

Then the next round of Regional Water Planning the State provided a Common Technical Platform which was based on the Diversions. I keep forgetting the name for it, but it is Exhibit 17, the Water Use By Category?

I know in the Region where I was involved there was a lot of

criticism of that as being a really overly simplistic way of looking at water. It wasn't a Water Budget in particular because it's based on Diversions. It led to very overly simplistic thinking such as, "70%+ is being used for agricultural; let's just take some of that," and people walked out thinking that was the solution.

In terms of the Common Technical Platform, there was some critiques of that. It wasn't a critique of the ISC providing data, the critique was the data was overly simplified and inadequate. It wasn't a critique that, "Well the State shouldn't provide anything."

I mean instead of throwing the baby out with the bath water, should a Common Technical Platform still be there as an equity issue such that all Regions would have access to good quality data, as opposed to something in the middle? And I'm not

sure what that is?

A. BY MS. ELAINE HEBARD: Right.

Q. Would a Common Technical Platform potentially be a Water Budget, or a methodology, or resources so that everybody might...

We don't have a national lab in my Region. I don't know who would do a Water Budget in Mora; I'm pretty sure nobody could.

Like where is the equity in that and could a Common Technical Platform be better, as opposed to just not having anything at all?

A. BY MS. ELAINE HEBARD: I think one...

Thank you, Commissioner.

I think one of the issues with the Common Technical Platform is that it relied on those 9 human Diversions in the State Water Report.

What we found in the 2004 report, when Dr. Shoemaker and his group did the analysis for us -- and that was paid for, thank you, by the

state -- they found that some 45% of our water usage was by evapotranspiration off of the Bosque and other places, and evaporative losses off of the river not including Elephant Butte. That was not included in the Common Technical Platform.

When you have those huge amounts of uses not included, how do you plan if you're trying to keep the Bosque and deal with the Endangered Species Act, and ensure that water is going to get downstream to meet our Compact deliveries?

In other words all consumptive water uses have to be included, so that was one of the huge problems for us in the Common Technical Platform. It has to include all water consumptive uses so that we can plan for them.

COMMISSIONER GARCÍA: Okay. Thank you very much.

HEARING OFFICER ORTH: Any other Commissioner in the room?

No.

Commissioner Suina on the platform.

I should note that Commissioner Balok joined us on the platform some time ago; I forgot to mention it then.

Commissioner Suina.

COMMISSIONER SUINA: Thank you, Madam Hearing Officer.

EXAMINATION

BY COMMISSIONER SUINA:

Q. Thank you so much for your Testimony and the Q&A again, and I apologize I'm not in person.

I wanted to go back to your verbal Testimony. I think one of my fellow Commissioners was talking about ownership and Adjudication, or basically quantifying and how long it takes.

You know, we've had some stretches, and it's been like 50 years, and you had mentioned the

Middle Rio Grande Region. How do you see us proceeding without a quantification of ownership along, say, a very complex Water Planning Region with many, many different stakeholders?

A. BY MS. ELAINE HEBARD: (No audible response.)

Q. I know that's a big question, but I want to get my head around what your Comments are related to looking at the most extreme of a very complex Region like the Middle Rio Grande.

A. BY MS. ELAINE HEBARD: Thank you, Commissioner.

I would say that I don't see any effort being made toward Adjudication, so I'm really not advocating Adjudication. I'm advocating that people who own the Water Right have a way of participating. If they are not part of an Acequia association or of a Tribal interest such as the Middle Rio Grande, is the Middle Rio Grande Conservancy District

sufficient with one Board Member to represent all of those interests up and down that 4 county area, and I suggest that it's not. One way to incorporate those interests would be to bring in a group to identify who owns what, you know?

I don't really see that there is an overwhelming problem. We have the Tribal entities talking about what they've got, and some of the Acequia groups might deal with that. I think we need to bring in ownership in some way, and I think it can be done by having a committee.

The way we dealt with it in the 2004 plan is that there was actually a Water Rights group that had a vote as to what plans went forward. MRGCD actually led that group, but it was a specific subgroup of our planning groups that came forward and talked about their interests.

I think you can incorporate the ownership within the planning

process and not get sidetracked by "We haven't Adjudicated and we're not going to Adjudicate, and so we can't plan."

I think you can still bring in people and tell them how valuable both their property right is and their time is to help solve these big issues.

Q. Thank you for that response.

My follow-up question to that is given your response, is there still specific changes to the language or have you proposed specific changes to the Proposed Rules to address that concern?

A. BY MS. ELAINE HEBARD: I have submitted some, and I'll go back and review that, after being grilled about my Comments and my thoughts, and make sure that I have addressed those as well.

COMMISSIONER SUINA: Thank you for your responses.

Thank you, Madam Hearing

Officer. That's all I have.
HEARING OFFICER ORTH: Thank you.
All right. Thank you very much, Ms. Hebard.
We'll move online for a moment.
Arturo Archuleta; are you online with us?
MR. ARTURO ARCHULETA: Yes, I am. Can you hear me?
HEARING OFFICER ORTH: Yes.
If you would please spell your first and last name.
MR. ARTURO ARCHULETA: Sure. It's Arturo, A-R-T-U-R-O; Archuleta, A-R-C-E-U-L-E-T-A.
HEARING OFFICER ORTH: And you're with Amigos Bravos.
MR. ARTURO ARCHULETA: No, I am with the New Mexico Land Grant Council.
HEARING OFFICER ORTH: Okay. Thank you very much. Go ahead.
MR. ARTURO ARCHULETA: Thank you.

ARTURO ARCHULETA,
after having been first called,
was examined and testified as follows:

PUBLIC COMMENT

BY MR. ARTURO ARCHULETA: So, Madam Hearing Officer, members of the Commission, again my name is Arturo Archuleta. I'm here on behalf of New Mexico Land Grant Council. The Council is a State agency that is tasked with providing support to Land Grant Mercedes throughout the State.

Land Grants, like Acequias, are small local government entities that predate both statehood as well as the establishment of the United States Sovereignty here in the Southwest. Under State law Land Grant Boards of Trustees have authority over the common waters of their respective Grants.

The Council has submitted Written Testimony to the Commission during the open sort of period for

Public Comment, and I just want to briefly sort of go over some of our recommendations:

The first is that the Rules need to include language in Section 19.25.16.6 to include political subdivisions of the State as entities that are targeted for meaningful input and participation. I think this will help capture some of the small local government entities like Land Grants, Acequias, as well as Mutual Domestics.

We also support the inclusion of the Land Grants as part of Section 19.25.16.12, which covers "

"Composition of Regional Water Security Planning Councils."

We also encourage the inclusion of representatives from Mutual Domestic Water Consumer Associations within that section just because that is another sort of water interest group comprised of local small communities, and it's kind of a

local government structure.

Then finally we request the inclusion in the Rule of the Acequia and Rural Water Security Advisory Working Group as was proposed and described earlier by Mr. Alfredo Montoya. The Council supports that, and it was included in our Written Comments as to why we believe that is very important to ensure that the rural community water users have sort of another opportunity to be heard and sort of an additional sounding board for giving input into this process.

With that I will wrap up and stand for any potential questions.

HEARING OFFICER ORTH: Thank you, Mr. Archuleta.

Commission questions.

Commissioner García.

COMMISSIONER GARCÍA: Thank you.

Thank you, Mr. Archuleta, for your Testimony today.

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EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Could you tell us how many Land Grants there are in New Mexico and the role that they play in community development so that we can better understand the scope of the Land Grant community statewide?

A. BY MR. ARTURO ARCHULETA: Sure. I appreciate the question, Madam Hearing Officer and Commissioner García:

While there were hundreds of Land Grants initially, today there is roughly 3 dozen Land Grants that exist in some form or fashion, and we provide support directly to those Land Grants that are political subdivisions of the State. They have been recognized by the State of New Mexico as local government entities, and there are 28 named political subdivisions in the Statutes.

As sort of local government entities, Land Grants provide for not

only the management and care of the common lands and the common waters that they've sort of been able to retain, but they oftentimes also serve as sometimes the only small local government within their rural regions, and so they will often provide other services like community centers, as well as weighing in on sort of policy issues, water infrastructure, wastewater infrastructure, as well as maintaining some of the local roads, so they do sort of have a little bit broader scope than just management of land.

One of the important aspects, as I mentioned, is that Land Grants do have, within their statutory authority, the ability to manage the common waters. What those common waters include oftentimes are springs that are commonly used by the community, and so they have a definite interest in sort of protecting those resources and ensuring that they are included in

Regional Planning processes.

Oftentimes, because they are sort of unique in this authority, they are often overlooked when it comes to like Waters of Adjudication, as well as sort of just water planning in general. At this time we're hoping to bring them back into the fold of being included as sort of some of those groups.

Q. Great. Thank you for that answer.

A follow-up question is about participation in planning and Regional Water Planning. Do you have any thoughts or recommendations about how this process could be made more accessible to limited-resource communities like Land Grants, where most of the governing is done by volunteers in rural areas, and could you Comment on the need for resources for participation?

A. BY MR. ARTURO ARCHULETA: Sure. It's definitely always a challenge for

our communities.

As mentioned earlier with some of the other organizations, like the Mutual Domestics and Acequias, most Land Grants do operate on sort of a volunteer basis. Members of the Board of Trustees can receive a very small stipend that's sort of capped by Statute, and so these are really unelected -- or not "unelected," but elected volunteers who serve their communities.

You know, one thing that's helpful is having opportunities to provide Comments and engage in these processes that fit around their schedules. Oftentimes, they are working full-time jobs, and so when you have hearings that are just scheduled in the middle of the day Monday through Friday, that can be challenging. Obviously, doing evenings and weekends is always helpful in terms of sort of allowing them access.

Also, you know, as mentioned

earlier, a lot of our Land Grants don't have professional staff, and so organizations like the New Mexico Land Grant Merced Consejo, which is like kind of an association of Land Grants, as well as the Council itself, can sort of help lend some support from our staffing ability to engage in these policy discussions.

There is a lack of resources, I think, across the board for a lot of our rural communities. I'm not sure what the solution is, but I know there was a proposal for addressing the need for funding within the Rules, and we would support that, and I think that's a welcome addition. It was mentioned earlier, and I think that's something that's important for ensuring there is opportunities for involvement by members of rural communities.

Q. Just one more question:

What kind of data do you think Land Grants and rural communities need to plan for their future in terms of

water?

A. BY MR. ARTURO ARCHULETA: I think that's a great question:

I think part of the important data that's necessary is being able to understand what the water availability is what are the sort of future impacts of those uses.

I heard earlier some mention about the need for understanding the Water Rights and who actually has the Rights, and how are those impacted based on sort of some of the decisions, which I think is definitely important in getting an understanding within a basin of what the potential risks or threats to future water supplies are.

Then also what I think would be helpful is maybe, through the planning process, to be able to identify what are planned developments or planned future water uses within the different governance structures that have jurisdiction within those different basin Regions.

COMMISSIONER GARCÍA: Thank you very much. That's all.

HEARING OFFICER ORTH: Thank you.

Other Commission questions?

No.

All right. Thank you very much, Mr. Archuleta.

Evalyn Bemis, are you on the platform?

MS. EVALYN BEMIS: Yes, good afternoon.

HEARING OFFICER ORTH: Hello.

If you would spell your names, please.

MS. EVALYN BEMIS: Yeah. My name is Evalyn, E-V-A-L-Y-N; last name Bemis, B as in boy, E-M as in "Mary," I-S.

HEARING OFFICER ORTH: Thank you.

And your affiliation?

THE WITNESS: I am a Parciente with the Acequia del Llano, north of Las Vegas.

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EVALYN BEMIS,

after having been first called,

was examined and testified as follows:

PUBLIC COMMENT

BY MS. EVALYN BEMIS: It's a small Acequia with only 7 members, but what is interesting in our case is all our wells tend to be quite shallow.

Our own property, it's only 100 feet to water, and so we are extremely concerned about water quality issues.

We have watched with horror at what's happened in the La Cienega area from people's wells becoming contaminated with PFAS from the fire foaming agents they have used at the airport with the National Guard, and now with the Water Quality Commission coming under pressure from the Governor to rewrite the Rules that held off from produced water, or fracking wastewater, being reused until there is actual disclosure of

the chemicals used in fracking and other proof that the water is no longer radioactive or other concerns.

With the Governor putting pressure on to overturn those Rules for the benefit of solving the oil and gas industries' problems, if we face this water as agricultural use or really in any way that it can get into the water table, we have no alternative.

We are too far from a municipal water source, and there is no science that proves you can get those chemicals out of water.

This may be a little bit of a side issue about your Rule promulgation, but I just want you to be very mindful of the power that you hold to help protect the whole State in this regard. You know, slow things down.

Just as earlier speakers mentioned, water is life. It is the basis of everything.

I appreciate you giving me the opportunity to Comment. Thank

you.

HEARING OFFICER ORTH: Thank you, Ms. Bemis.

Commissioner question of Ms. Bemis.

No.

Thank you very much.

I have just a note, "Amigos Bravos." Is that you, Ms. Knopp, who is asking?

MS. SARAH KNOPP: Thank you very much.

I'm sorry; I didn't realize I was logged in that way. This is Sarah Knopp from Amigos Bravos.

HEARING OFFICER ORTH: Great.

Would you spell your first and last name, please.

THE WITNESS: Sure. My name is Sarah Knopp, S-A-R-A-H, and the last name is K, as in kite, N, as in Nancy, O-P-P.

HEARING OFFICER ORTH: Thank you. Go ahead.

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SARAH KNOPP,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. SARAH KNOPP: Thank you, Commissioners, and thank you, Madam Hearing Officer, for the opportunity to Comment:

As I said, my name is Sarah Knopp. I am a Policy Specialist with Amigos Bravos.

Amigos Bravos is a statewide water quality protection and restoration organization guided by social justice principles and dedicated to preserving and restoring the ecological and cultural integrity of New Mexico's water and the communities that depend on it.

Amigos Bravos entered an appearance as a party to the recent Water Quality Control Commission hearing that banned the use of treated produced waters, banned the discharge

of treated produced waters to our streams, rivers, wetlands, and Groundwater.

Allowing interested groups to enter into the Rulemakings as parties allows for a participatory process that allows any stakeholder to present evidence for profound consideration and questioning by Commissioners.

It also allows for the technical expertise of stakeholders, in this case water users, to be questioned by Commissioners. Perhaps most importantly, because some of what I'm describing has been done in the Commissioner's careful questioning of people giving Public Comment today...

And I thank you, Commissioners, for taking Comments seriously enough to do that. The difference, if groups were allowed to enter as parties into the Rulemaking process, would be that it would allow us, as stakeholders and water users, to question and Cross-Examine

witnesses and evidence presented by others, such as the ISC, and sort of question them more profoundly.

Since one of the topics of this Rule is about Public Welfare and the needs of future generations, we hope that the ISC will set up a Rulemaking process that allows for this higher level of participation in the process of decisionmaking, allowing groups and individuals to enter as parties.

We have evidence from other Commissions, such as the Water Quality Control Commission, that this works. In the recent Rulemaking that I mentioned we believe that participation of parties from interested groups led to a Rule that was more protective of human health and the environment.

We know that sometimes allowing the public to participate in the Rulemaking process as parties may slow things down, and we've also been told that the ISC is meeting all of

its minimum requirements for public participation, but if Public Welfare and the needs of future generations are indeed a priority, then it should be a priority for members of the public who can speak to those needs to be able to speak to them in the process of making Rules themselves.

The Jemez Principles for Democratic Organizing, which were developed here in the State as a foundation of environmental justice in 1996, the third principle says:

"Let people speak for themselves."

As other speakers here have said, slowing things down is not always a bad thing when it makes the process better, especially by affording greater clarity.

For example, we've heard a lot of questions that are substantial about how Subregions would work given that Tribes already have independent and Sovereign systems for managing

their water resources.

I think that today's Public Comment session, and I would thank you, Madam Hearing Officer, for allowing me to illustrate the point I'm trying to make. I really enjoyed the Comments of those who have already given them.

Amigos Bravos also supports the Comments submitted by the New Mexico Acequia Association. I would love to see them be a party to these proceedings, or Mr. Yazzie, or the San Juan Farmers Collective.

Ms. Hebard's Comments made me think very profoundly how nice it would be to have a Water Rights map, so thanks to everyone who raised these Testimonies today.

Amigos Bravos urges the Commission to set up a process for Rulemaking that allows for this higher level of participation for all stakeholders; namely, allowing the public and other interested parties to

enter as parties and submit evidence for consideration, and to Cross-Examine evidence submitted by other parties. Thank you very much.

HEARING OFFICER ORTH: Thank you, Ms. Knopp.

Are there Commission questions of Ms. Knopp.

No. Thank you very much.

All right. We have a lot to do before we get to 5:00 o'clock. We'll hear from Mr. Gaume, Mr. Wessely, and Mr. Chakeres. Those 3 witnesses are speaking this afternoon specifically because they won't be available tomorrow.

Let's take a 10-minute break and come back and press through. Thank you.

(The Evidentiary Hearing recessed from 2:27 p.m. to 2:36 p.m.)

HEARING OFFICER ORTH: All right. Let's come back from the break, please.

We are back after a short

break.

I had made a commitment to Mr. Gaume and Mr. Wessely that they could offer their Comment around 2:00 o'clock today, but they understand that Mr. Chakeres has a time constraint and we need to get through his Testimony this afternoon.

Ms. Becker, I think we'll go to you.

MS. BECKER: Thank you very much, Madam Hearing Officer, members of the Commission:

The way we will proceed then is with the Q&A with Mr. Chakeres as planned, allow time for questions with the Commission, and then I will regroup without that opportunity tomorrow to talk about those, to be responsive.

HEARING OFFICER ORTH: Thank you.

MS. BECKER: Thank you.

NATHANIAL "NAT" CHAKERES, ESQ.,
after having been first called,
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BECKER:

Q. With that, Mr. Chakeres, would you please begin by saying your name and spelling it.

A. Thank you.

My name is Nat Chakeres. First name, N, as in north, A-T; last name C-H-A-K-E-R-E-S.

(NMISC Exhibit 28 was received in evidence.)

Q. BY MS. BECKER: Mr. Chakeres, let's begin with your qualifications:

Is your Résumé contained in Exhibit 28?

A. Yes, it is.

Q. Did you Prefile that with Written Testimony on October 1st?

A. Yes, I did.

Q. In looking at your Résumé -- you don't have to look at it.

If you will just tell the Commission whether it accurately reflects your education and work experience.

A. Yes, it does.
Q. Are you currently serving as the General Counsel for the Office of the State Engineer?
A. Yes, I am.
Q. Are you also the Director of the Litigation and Adjudication Program?
A. Yes, I am.
Q. In what capacity are you providing your Testimony today?
A. Primarily I would say as Director of the Litigation and Adjudication Program. I am not testifying about legal advice I am giving to the State Engineer; I'm testifying about Office of the State Engineer Policy, which the Litigation and Adjudication Program helps our Water Resources and Allocation Program develop.
Q. Thanks for that clarification.
Do you affirm your Testimony today as you Prefiled it on October 1st?
A. Yes.
Q. Let's start with how you would

describe your relationship, your working relationship with the New Mexico Interstate Stream Commission.

A. I think of the New Mexico Interstate Stream Commission and the Office of the State Engineer as sister or related agencies that share a common mission. At root what we're all trying to do is ensure that New Mexicans' water needs are met in a legal, equitable, and fair manner.

Q. What do you want the Commission to know about the importance of Public Welfare considerations in Regional Planning?

A. A number of witnesses have testified about the 1987 -- witnesses and commenters, excuse me -- have spoken about the 1987 Regional Planning Statute. That Statute actually included Public Welfare as something that Regional Planning should discuss, so from its inception in New Mexico it has been intended by the Legislature that Regional Planning groups or

Councils or entities discuss issues of Public Welfare and help define that issue.

Q. Okay. Let's turn to your Testimony that began with some history of the term of "Public Welfare":

Is it fair to say that the bulk of your Testimony is within the scope of the Public Welfare considerations in planning?

A. Yes, the bulk of it.

Q. Okay. I just want to be clear:

When do you understand that the concept of Public Welfare originated?

A. In the 1980s there were a series of Applications to appropriate very large quantities of Groundwater in the Lower Rio Grande by the City of El Paso. The State of New Mexico rejected those Applications. The City of El Paso then sued New Mexico, with the theory that water was an article of commerce and that New Mexico could not discriminate against an out-of-state

entity in whether they could engage in that type of commerce, and the courts agreed with El Paso.

At about the same time there was a similar dispute going on between I believe Colorado and Nebraska. Nebraska had a Statute that said it could reject export of water if the export would be Contrary to Conservation of Water within the state, or Detrimental to the Public Welfare of the state.

New Mexico, following that Supreme Court case, brought that language completely into its Statutes knowing that exact language had been upheld by the Supreme Court as allowing for considerations that would help potentially prevent the export of water.

Q. I just wanted to make sure that I was following:

You are referencing the Sporhase v. Nebraska case.

A. Yes.

Q. Did New Mexico, in essence, copy that standard into New Mexico water law?

A. Yes, it did.

Q. In essence does that give New Mexico the ability to discriminate water users on the bases of export or import?

A. No, it did not.

Again, I think a lot of the folks we've heard from over the past couple days would blanch at the idea that water was an article of commerce. We have heard other types of values associated with water, but that's what the federal courts have held.

We cannot discriminate against other states in the same sort of economic activity, what we have to do is hold standards that are roughly equivalent.

The Conservation of Water within the State and the Public Welfare of the State concepts also were applied to in-State proposed transfers of

water.
Q. Was the "Public Welfare" language then used in the 1987 Water Planning Statute?
A. Yes, it was.
Q. And does the...
I may be jumping ahead a little bit.
The Water Security Planning Act, I trust you're familiar with that, and we'll get to it; yes?
A. Yes.
Q. Did that in essence replace the 1987 Statute?
A. In large part. There were some intermediate steps there, but, yes, it is the current applicable Statute, and the 1987 Statute was the first in that line.
Q. Thank you. I appreciate you noting that there is some carryover language or some similar language, and we'll get to that.
Were you able to hear the Testimony of Mr. Erdmann regarding

Regional Planning efforts in 1987?
A. Yes, I was.
Q. Okay.
Historically, and I'm referencing around that timeframe then, how were Public Welfare considerations of Regional Water Planning made?
A. They were made very inconsistently across the Regional Planning groups. There was not a lot of guidance given about how to do it and about what would be done with it, so we ended up with, again, inconsistent results that the Office of the State Engineer was not able to then carry forward and consult in its determinations regarding Public Welfare.
Q. Did some of the Planning Regions formed in 1987 address Public Welfare directly?
A. They did, yes. There was at least one, or I know one through completion did, and I believe some others tried in sort of intermediate

ways.

Q. How does the Litigation and Adjudication Program of the New Mexico Office of the State Engineer deal with Public Welfare in the context of Applications?

A. Again, the Litigation and Adjudication Program helps advise and defend our Water Rights Division District Offices when they look at Applications.

We also develop policy and guidance for the State Engineer to consider implementing on these issues.

What we do is we help advise the District Offices that are looking at Applications in what they need to be looking at in order to be consistent with the law and current policy.

As part of that, we're trying to help the District Offices formulate a definition of "Public Welfare" that they can apply when Applications are before them.

Q. Is "Public Welfare" defined

anywhere?
A. Not comprehensively, no.
Q. Statutorily.
A. No.
Q. Is "Public Welfare" used outside of the New Mexico Office of the State Engineer's governing laws?
A. Sorry; could you rephrase that?
Q. Are you aware of whether the "Public Welfare" language is used outside of the purview of the New Mexico Office of the State Engineer?
A. It's a general concept. I think a lot of us have an idea of "Public Welfare," but other states have it in some of their Statutes, and some of their Statutes have some criteria to help determine what that is.
There are other places where it's used, but nothing that gives a comprehensive definition that can be applied by us in looking at Water Rights Applications.
Q. You identified guidance though. Could you describe what guidance is

given to District Offices by the LEP?

A. So in general, as I said, Public Welfare is a very broad and amorphous term. Our office has great expertise in Hydrology, Engineering, and Water Rights Administration, but we are not experts in other things that might qualify as "Public Welfare."

We are not cultural anthropologists; we are not economists. We are not experts in recreational values.

There is a lot of concepts that people might want to bring into "Public Welfare," but we were not equipped from the get-go to develop those standards and apply them.

What we do think of, though, are some floors, or some basic across-the-State core principles that we believe are coming out of our expertise in Hydrology and Water Rights Administration that do form the floor of "Public Welfare," so to speak, and so those types of concepts

are ones that we are advising the Water Rights Division to apply.

Do you want me to kind of go through those real briefly?

Q. Sure. Describe --

A. Sorry, yeah.

Okay. Those basically are the statewide objectives that are set forth in the Proposed Rule, so Compact Compliance, compliance with the Endangered Species Act, compliance with Regional Water Settlements, and the most common of those are Indian Water Rights Settlements.

They also include things like the Pecos Settlement, and hopefully coming up soon, the Lower Rio Grande Comprehensive Regional Settlement. Those, as well as Shortage Hearing Agreements under the State's Active Water Resource Management Program. We can't have Applications undermine any of those important State initiatives.

Q. So that we're all following, are you referencing the statewide

objectives that are in Section 14C of the Proposed Rule.

A. Yes, I am.

Q. What is the relationship between statewide objectives and "Public Welfare"?

A. I believe that those statewide objectives are our determination -- not "I believe..."

Those statewide objectives are our determination of, again, baseline principles of Public Welfare. They don't represent the entire universe of Public Welfare considerations, but they do represent core Public Welfare considerations that we need to make sure are not violated with any Application that comes in.

Q. Is it your understanding that the New Mexico Office of the State Engineer and the New Mexico Interstate Stream Commission are in agreement on this baseline principle approach?

A. At a Staff level certainly. I

will leave it to the Commission as to what, you know, its view is. But yes, at the Staff level.

Q. Now you mentioned a couple of cases in your Testimony that are relevant to Public Welfare evaluations and permit Applications that highlight how the Office of the State Engineer considers Public Welfare. Would you give a brief overview of the Tulla case?

A. Yes. So this is a -- the Tulla Resources case was a Proposed Application in the Lower Rio Grande with a transfer of Groundwater Rights from very close to the Texas State line to a location very close to Caballo Reservoir, which is the regulating reservoir for the Rio Grande project.

Everybody agreed that the modeling showed that there would be water coming out of Caballo Reservoir as a result of the Proposed Application; thus affecting project supply, which would affect potentially our Compact

obligations to Texas.

The parties, including the Water Rights Division and the Interstate Stream Commission, together presented argument to the State Engineer in that hearing that the Application should be denied on Public Welfare grounds because it could interfere with the State's Compact obligations.

The State Engineer, in an Order signed earlier this year -- and I have the relevant section attached as an exhibit to my Testimony -- agreed, and in a written, signed Order, rejected the Application on Public Welfare grounds because it was contrary to our Interstate Compact obligations.

That Order's appeal period has now passed, and so it is a Final Order not subject to appeal.

Q. Turning, then, to your Testimony, the last...

It appears that you did the

relevant portion of the Order identifying whether the proposed use and location of use would be Detrimental to the Public Welfare of the State, and that articulates what you just said; that it violates the Compact.

If it violates the Compact, it violates the law, and therefore, cannot be approved. Did I follow that correctly?

A. Yes.

I would frame as if it could interfere with our Compact obligations, it should be rejected as Detrimental to the Public Welfare of the State.

Q. That was an Administrative Order. Is that correct?

A. Yes.

Q. And was that signed by the State Engineer?

A. Yes.

Q. And is the State Engineer on the Commission?

A. Yes, she is.

Q. Okay.

Is speculation -- oh wait; I'm going to...

I got ahead of myself.

There was another case that you identified in your Testimony as also being relevant to the Public Welfare evaluation of the Office, and that's the Agustin Plains Application.

Would you describe how that fits in to the Public Welfare evaluation within NMOSE?

A. Yes.

The Agustin Plains Ranch Application is an Application to appropriate a very large quantity of Groundwater from the Agustin Plains in Southwest New Mexico and transport it via a pipeline to the Rio Grande Valley. The proposed endusers for that project have not been identified or really come forward as actually being interested in using that water. They have been identified, but they, themselves, have not self-identified.

The Application was rejected by the State Engineer on the grounds that it was a speculative Application. It looked like it was seeking to Appropriate all the water in that basin without any use, such that no other party could Appropriate that water, like the communities, the ranchers, and others who might need to use that water in that basin.

Speculation isn't actually written in Statute anywhere, it's really a judicial doctrine in New Mexico that we've recognized for a long time, but hadn't actually put into law as a basis that the State Engineer could use to reject an Application.

The way we articulated the State Engineer's position was if an Application is speculative, the State Engineer doesn't have to wait until it gets to the courts, the State Engineer can reject that Application as being Detrimental to the Public Welfare of

the State.
Q. Did the State Engineer, in fact, do that in the Agustin Plains case?
A. Yes, the State Engineer did. That case is still on appeal.
Q. Okay.
A. Yes.
Q. If I follow correctly then, speculation is within the Public Welfare of the State.
A. That is our position, yes.
Q. Were you involved in the lobbying effort for the Water Security Planning Act?
A. Yes.
Q. And there is Public Welfare language in the Act. Did you have a role in assisting with that language?
A. Yes. I wasn't the primary drafter of any section of the Bill, but I reviewed and provided proposed edits, some of which were accepted, yes.
Q. What is the statutory duty of the Office of the State Engineer as it relates to Public Welfare

determinations in the 9 Statutes that are listed in the Proposed Rule in Section 16?

A. In all of those Statutes, everywhere other than in Planning, that Public Welfare is mentioned in New Mexico Statutes it relates to Applications being considered by the State Engineer. Those are all listed in the provisions in Section 16 of the Proposed Rule. They all relate to Applications the State Engineer reviews.

Q. To be clear I'm looking at Section 16, Paragraph A. Those 9 Statutes are the universe of Public Welfare language currently within the Office of the State Engineer.

A. Yes.

Q. How does the Office of the State Engineer then systematically review Applications pursuant to these 9 Statutes in order to evaluate Public Welfare?

A. Well as I mentioned before, I think the baseline statewide objectives

are really what, from our expertise, we will use to evaluate it.

In Protested Applications, so Applications where other parties are seeking to stop the Application, if parties bring forward some other basis for Public Welfare, what the Water Rights Division has said in briefs is, "We'd consider looking at those things, but we are not going to be able to divine those things."

In other words, we can look at those baseline statewide objectives, but in order to make sure that we're covering the entire waterfront of Public Welfare we would need input from users who actually know firsthand on the ground how the Applications would affect their values.

Q. If I understand from a process perspective, you have identified that the Application review starts at the District Office. You've given guidance to those Managers such that if Compact Compliance is an issue, it

would be triggered or alerted at that level.

A. Yes, and it's sort of baked into our guidelines that our District Offices apply. We have, not everywhere, but in a number of areas we have guidelines that we apply, on the Pecos River, on the Rio Grande, and on the San Juan River, too.

If an Application is going to result in a net reduction in flow on those streams they have to find offsets, period full stop.

There are other Compact-specific limitations that are often baked into those guidelines, but that's the simplest one.

We don't have to have every District Office staffer understand every nuance of every Compact, but if there is going to be an effect on surface flows, you know, it's end of review and you need an offset.

Q. What was the Office of the State Engineer's reasoning for Section 16

even existing in a Regional Planning Rule?

A. The rationale there is to enable the State Engineer to receive input. It's not going to be binding on the State Engineer because it's the State Engineer's ultimate duty to determine whether an Application is contrary to Public Welfare, but it would help the State Engineer in carrying out that duty to get the insights and input from the Regional Planning entities in in order to look at that.

That's why we do not just have it where somebody will, you know, think about Public Welfare in the planning process, but where it will actually get to at the Office of the State Engineer. It will be looked at and it will be considered, and there will be something written showing that it was considered. That's really what Section 16 is about.

Q. What is the duty of the Office of the State Engineer as it relates to

Regional Planning?

A. Well there's a number of duties spelled out in terms of providing support.

I think our District Offices will be very involved in the Regional Planning process. In Ms. Hebard's Comments talking about the extent of Water Rights and what are our Water Budgets, our District Offices have been in the past, and will be in the future able to assist the Councils in understanding what the universe of Water Rights is in their district, so our District Offices will be very involved in the planning process.

Q. In the Water Security Planning Act there are, in essence, 2 directives or duties of the Agency to fulfill and incorporate in the Rule. Could you please talk about those 2 procedures?

A. I'm sorry. Could you just say the beginning of your question one more time?

Q. Sure.

From your Testimony, if you would expand on the 2 procedures that the Water Security Planning Act requires to be addressed regarding Public Welfare.

A. Right.

I am looking at the Rule, which I have in front of me. I don't have the Statute, so I might not get the language exactly right, but basically there are 2 procedures:

One is a procedure for how the Councils will provide their Public Welfare Value Statements to the Commission; and,

The other is how the Commission will tell the Regional Planning Councils how to incorporate Public Welfare in their activities.

Q. It's interesting you frame it that way. It's 2 procedures, 1 Commission-facing and 1 council-facing. Did I get that right?

A. Correct.

Q. Why is that important?

A. It's important because, from the Office of the State Engineer's perspective, those statewide objectives which we believe undergird Public Welfare, we can't have Regional Planning undermining those, and so we wanted a procedure by which the Commission informs those Regional Planning Councils that you can't be undermining, for example, a Tribal Water Rights Settlement that the State has entered into and spent 15 years negotiating;

You can't undermine a Compact;

You canned undermine the Pecos River Settlement.

Those things are the policy of the State. It would be counterproductive for the Regional Councils to just say, "Oh hey, we've got a great solution to our water needs; just stop sending any water to Texas."

I think that that's a fatuous

example, but it's what we need to do to get them to make sure that the plans are useful and can move us forward in meeting our shared water needs.

That's why the second procedure is there, and I believe that's in Section 14 of the Proposed Rule. We set forth those statewide objectives and mandate the consideration of those, and make that a criterion for Commission acceptance of the plans.

For the first procedure, again we would find it helpful at the Office of the State Engineer to hear the considered Public Welfare Value Statements of the Planning Councils in determining whether those Public Welfare considerations in the State Engineer's view constitute the Public Welfare of the State in the context of a Permit Application.

Q. To be clear about where it's articulated in the Proposed Rule are you identifying Public Welfare

considerations in Section 13?
A. (No audible response.)
Q. Do you have the Rule in front of you?
A. Let me just make sure I get to the right spot in the Rule.
Q. Okay.
A. Yes.
Yes; sorry.
Q. Again, that's just Regional Water Security Planning Council meeting and input requirements. You understood that values would be part of the discussion that Councils shall develop through broad input in this. Am I following you?
A. Yes. Yes.
Q. Okay.
What about in Section 14, which is titled:
"Considerations For Councils During Planning Processes"?
Is there areas there that you think Public Welfare would be

discussed?

A. Yes. In 14A(7), "Public Welfare Values" are expressly called out as a consideration that Councils must consider when developing their Regional Water Plans.

Q. Would you expect Public Welfare to come up in Section C of 14, which is that statewide objective?

A. Yes.

As I stated that really is, from the State's perspective, the floor of Public Welfare that needs to be adhered to in all of these processes.

Q. Then looking at Section 15, Public Welfare is called out -- let's see -- I believe in a couple of areas, but I just want to make sure.

Is that also what you think satisfies part of the procedure for Councils to both consider and document criteria that shows that they actually looked at Public Welfare?

A. Yes. Yes.

In particular, 15A(6) and A(9) are both places to document the consideration of "Public Welfare Values," including the statewide objectives.

Q. Are you aware of the Public Comment by WSTAC that was submitted during the time period -- I'm not referencing Comments made yesterday, but during the Public Comment period that supports adding compliance with language that the ISC Staff testified they would like to add?

A. Yes.

Q. Do you also support that change?

A. Yes, I do.

Q. Are there other changes based on your Written Testimony that you are recommending for the Commission to consider?

A. There are a couple, yes.

Q. Please proceed.

A. One area that WSTAC's representatives had previously suggested was in Section 16. This is

really a semantics issue saying, in 16(A):

"The State Engineer may consider issues of Public Welfare if the State Engineer determines that they are related to or may impact the Public Welfare of the State."

We didn't mean to imply that the State Engineer could say, "Yeah, this impacts the Public Welfare of the State, but I choose to disregard it." Changing that "... may..." to "shall" in 16(A) I don't think changes the intended meaning of that, so that's the first.

The second is there has been a lot of concern raised that this process could undermine the sanctity of Water Rights as Property Rights in the State, and the constitutional imperative of Priority Administration. Nothing in this is intended to do that, and in fact the Water Security Planning Act prohibits that.

When we are looking at Public Welfare, we are not looking at preventing any water user from using their Water Right. Public Welfare only comes into consideration when there is a Transfer, when there's a change, or a proposed change.

It's been the case since 1907 that if somebody wants to change a Water Right, they need the permission of the State Engineer, so there is not an absolute right to that change. That's why it's more appropriate for Public Welfare to be a consideration just when somebody changes a Water Right or files a brand new Application rather than exercising an existing Water Right.

We've heard a lot of concern about, "Hey, are you just trying to, through these Rules, through this process, undermine existing Water Rights, including very Senior Water Rights?" We are not.

I would also support, just in

the "Objectives" in Section 6, a statement that reaffirms that nothing in these Rules is intended to affect or undermine any existing Water Rights. It is also not intended to undermine a Prior Appropriation system or condone any practices like Condemnation of Water Rights.

Q. Thank you; that was a lot. That was very responsive.

I'm going to make sure I parse that so that we're comprehensive in the understanding:

In addition to the proposed Rule you're recommending a change that's included in your Testimony for the State Engineer from "... may..." to "shall," and not binding her determination, but it's only if she determines that it is a matter of Public Welfare that she will consider it.

A. She will consider it, and then write down what she decided and that's all.

Q. Okay. That's provided in Paragraph C that, relevant to any determination, she'll explain the reasoning in writing.

A. Yes.

Q. Okay. I wanted to make sure I captured that.

Then the second proposed change you are identifying has to do more with Comments reflected today, and we may have more of a chance to discuss this after questions of the Commission.

If I follow you correctly you're looking to make certain in the "Objectives" section, which would be Section 6, that there be nothing in this Rule that would supersede or violate State law regarding the role and authority of the State Engineer or Prior Appropriation, and nothing that would permit Condemnation or abridge the rights in any way of any water owner, including the Nations, Tribes, and Pueblos.

A. Correct, yes.
Q. Okay.
A. I would just point out that Comment, and I mean we've heard Comments in the hearing. It also is reflected in some of the Written Comments that we received before the Hearing from parties that really suggested getting rid of Section 16 entirely, saying that they feared this was undermining Water Rights and the State Engineer's role.
Q. Great.

I want to tie into that, but I want to make clear that the Act, Section 44, and I believe this is what you were referencing earlier and I want to make sure there is flow-through here.

The Water Security Planning Act, I believe as you alerted, has language carried over from the 1987 Act. Is that correct?
A. That is correct.
Q. Is that language specifically

Section 44 that deals with no Condemnation, no abridging, no violation of the Water Code?

A. That's correct.

When the water planning statutes have been updated, the Legislature has kept in the statutes the very clear statement that nothing in the planning process should be interpreted to allow or permit Condemnation of Water Rights by the State, or by the Commission, or undermining Prior Appropriation or existing Water Rights.

Rather than just tell people "Trust us, we'll follow that Statute even though it's not in the Rules," I think it would be cleaner if we just also reaffirm that in the Rules.

Q. I understand. That's not necessarily a change, it's an adherence to the law that gives people comfort or it is assurance language. Am I hearing that right?

A. That's the goal.

Q. And since 1907 New Mexico's Water Code has not allowed for a Transfer of Water Rights but for the permission of the State Engineer. Is that correct?

A. That's correct, within the areas that are under the State Engineer's jurisdiction.

Q. Well as you understand the Proposed Rule, is it contemplated that a Council might make a plan and submit that plan to the Commission that would seek approval for a Water Transfer?

A. There may be an endorsement or a statement regarding a Transfer, but we are not anticipating that any plan would actually constitute a proposed Transfer itself.

Q. And any Transfer that is proposed that, say, came up in the form of a Project, Policy, or Program, should a transfer be proposed, it could only happen through the Permit process articulated in Statute before the State Engineer.

A. That is correct.

Q. Okay.

Let's now look at the other link that I believe you were referencing, which has to do with Comments made during the period that identified changes to Section 16.

Frankly, it was to scrap Section 16. Isn't that right?

A. Yes, there was a group of Commenters that suggested that.

Q. Why not? Why not scrap it?

A. Well it's obviously the Commission's goal, and I think it would be a missed opportunity here to get the input to the State Engineer regarding Public Welfare Values.

There have been a lot of efforts since 1987 to get a better definition of "Public Welfare." Some of those have been, I think, somewhat problematic, and our Office has rejected them because it's basically put too big a burden on our Office to be able to divine what is in the Public Welfare of these communities.

I don't know that any official, elected, appointed, or otherwise, is a philosopher king able to fully divine "Public Welfare." We need the input from the actual water users and the actual communities in order to consider that, and this is just an effort to ensure that that happens.

There have been some sort of legal procedural objections to Section 16, and I don't want to get to wonky on the law, but basically those objections are, "This is the Commission, it's not the State Engineer. Why is the Commission putting a duty on the State Engineer?"

The State Engineer is on the Commission; we are related agencies. It is not a proposal that, again, affects or binds the State Engineer to exercise her discretion in any given way, so I don't think that technical legal objection should stand in the way of us getting better policy through

on Public Welfare.

The other just sort of substantive reason why I think parties want to scrap it is they, I think, are worried that Water Rights will be undermined and the sanctity of those Property Rights. That's why I want to give some assurance that we're not changing how we're looking at Water Rights in terms of you can keep exercising them. What we're trying to do is make sure that we make the right call on Public Welfare.

If we are not getting this input up front, it may come out in Protest to Applications, and then may be defined in Court cases, which I don't think will actually result in better policy.

Q. We began walking through your Prefiled Written Testimony as it related to 2 procedures that the Act required regarding Public Welfare; 1 Commission-facing, 1 council-facing. I just heard you say if you scrap 16,

you would in effect have no procedure for the State Engineer to consider Public Welfare Values and the needs of future generations of New Mexicans but for Section 16. Am I following that correctly?

A. Yes.

Now that's not to say that those Public Welfare Statements might not still be made and they might not get to the relevant people at the Office of the State Engineer, but there is no guarantee of that happening, so again I think that would be a lost opportunity.

When I am looking at the Water Security Planning Act and trying to advise how to effectuate the Legislature's intent, the Legislature saw fit and stated that it was important enough that we actually have to put together a Rule specifying a procedure to articulate those Public Welfare Values back to the Commission.

Well if we look at what the

Commission does, the Commission doesn't actually apply Public Welfare anywhere, so my interpretation of this is that the hope of the Legislature with that is to get those statements to the State Engineer where they can be applied, if appropriate, to Applications.

Q. Does the State Engineer serve by Statute as the Secretary of the Commission?

A. Yes.

Q. So there will always be a State Engineer on the Commission who will have an active role in the approval of any plan from any Council. Is that correct?

A. That's correct.

Q. Let's look at one other:

I think you're familiar with the Comments. If they didn't want to scrap 16, wasn't there an effort to bind the Engineer's decision?

A. There was another group of Comments that said, "Well the State

Engineer isn't bound by these Public Welfare Statements, so what good are they? This is just," you know, "undermining the will of the people"; I don't mean to be pejorative about it.

My answer to that is, the State Engineer is the one confirmed by the Senate and appointed by the Governor, serving under State law, who has to decide whether an Application is detrimental to Public Welfare, it is not these Councils.

The Councils are not regulators and they are not writing binding policy. It would be really displacing the State Engineer's authority to make any substantive input binding on the State Engineer.

Q. In your Testimony you give some examples, I believe, of communities that may have different ideas of what Public Welfare could be. Could you speak to those?

I think it helps us envision what might fall within a "Public

Welfare" consideration.

A. There's a lot of different views of water, and I'm really heartened when I hear the Comments, and I read the Comments that came in about what people are concerned about. There is a lot of potential for different values that need to be reconciled to determine whether they are really in the Public Welfare of the State, and I'll give you some examples, you know, that I've come across:

We have communities that want to prohibit any Transfers of water to cannabis cultivation in their community;

We have other communities that are very concerned about the smells that might come in from feedlots.

The flip-side of that is communities that want to protect the rights of all of their users to engage in agricultural use of water, and so it's sort of a right-to-farm type of

ethos.

There are communities or users who think that rivers and streams should be given more rights themselves as healthy living entities.

There is places where people want to make sure there is enough flow in a river for fishing.

There is places that think that oil and gas keeps the light on and they don't want undue restrictions on the ability of oil and gas to continue using water.

These are all different values. It is not easy, just sitting without the reasoned input from a Regional Water Plan, for the State Engineer to sort through these things if they are brought up just on an ad-hoc case-by-case, Application-by-Application basis.

Q. Does the Office of the State Engineer allow for prioritizing or the preference for one type of water use over another?

A. Generally not.

The New Mexico Water Code is one of the strictest in the West in terms of being agnostic as to different water uses. A few states like Idaho, and a few other western water states, actually have tiering of priorities of their different uses within their Prior Administration system. We do not, and I think that's a conscious decision by our Legislature through the years that we try to adhere to.

Q. Based on your reading of the Proposed Rule and speaking to the procedural language required by the Act, do you understand these Councils, as proposed in the Rule, to really have a procedure for dealing with Public Welfare?

A. What I believe the Rule does is it provides, one, on the Council-facing side again, substantive feedback about what they need to be considering to be consistent with Public Welfare.

In terms of determining their

own Public Welfare Value Statements and transmitting them back, it's clear that those should be transmitted I think.

There is not a lot of detail in the Rule about when in the process that needs to happen, and I think that's by design.

I don't think there is a one-size-fits-all approach across all of the Planning Regions. To some Public Welfare might be the most important thing they try to tackle; others not so much, or they might not be able to reach consensus on it, but still be able to reach consensus on Projects and Plans and things like that.

We don't want to over prescribe, "You shall make a list of Public Welfare Values by this date before you do this other thing," it's left more to the discretion of the Councils.

Q. I believe you touched on this,

but additional Comments that came in that you evaluated in your Written Testimony had to do with upholding private Property Rights and the Doctrine of Prior Appropriation. Is the assurance statement that you gave earlier in your Testimony here today to the Commission enough to, in essence, assure or satisfy the thought that there is no violation of Property Rights or the Doctrine of Prior Appropriation?

A. I believe so.

Again, I don't think there is anything in these Rules that actually change anybody's Property Rights. At best what it will do, as it relates to Public Welfare, is give the State Engineer information to consider in performing the duties that already exist to determine whether Public Welfare is going to be harmed by a Proposed Application.

Q. Speaking to the Commission, how can they be certain that there won't

be efforts to Transfer Water Rights, challenge Private Property Rights, or a sort of end-around on Prior Appropriation by this Proposed Rule?

A. I don't think there is anything, you know, in the Proposed Rules that allow that. I mean if there is, and if somebody tries to use the Proposed Rules to block a Transfer, if we have Savings Clause language preventing that, I think that makes those legal challenges go away.

We already have a Statute that would prevent the Rules from being interpreted in that way, so those are why I, at least, feel assured that these Rules don't do that, and that's what I'm submitting to the Commission to consider.

Q. Do you have -- excuse me.

Do you have experience as the Director of Litigation and Adjudication on challenges to Public Welfare currently or in the courts?

A. Yes.

Q. How have you fared so far in those regards?

A. Some. We've had, you know, litigation where parties want to define Public Welfare, and in some cases we've had the Water Rights Division's proposed view of Public Welfare prevail and on some we haven't.

In the recent case of the Pueblo of Sandia and City of Rio Rancho, Pueblo of Sandia presented some arguments related to Public Welfare that differed somewhat from what the Water Rights Division's view of it was, but Pueblo of Sandia prevailed.

Now that case is on appeal, and I don't want to go too far into the, you know, merits of it, but parties can always bring issues of Public Welfare in the context of Permit Applications.

Q. What I've heard you say is that the Office of the State Engineer, through Litigation and Adjudication,

has crafted and been involved enough in the Rule to try to minimize conflict and to try to maximize procedures, and to not define Public Welfare, but say, at a floor, that:

It can't be speculative;

It can't be in violation of the statewide objectives; and,

It can't be contrary to Compact Compliance.

A. Right.

I would put Compact Compliance in with the statewide objectives, but yes.

Q. Okay.

The language of "statewide objectives," that wasn't the language used in the Tulla decision, was it.

A. Not precisely, but I think it was substantively analogous.

Q. I agree. I understand the link, but I just want to make sure that was Public Welfare language.

A. Yes. Yes.

Q. Okay.

Are there any other edits that, at this time, you're making a recommendation to the Commission regarding Section 16?

A. No.

Q. Are there any other changes that you're recommending regarding the procedure to the Councils that are contained in Sections 13, 14, and 15?

A. I think that we're still hearing Testimony, and I think that I will be consulting with Commission Staff on any further changes, but I don't have any right now.

Q. At this juncture is it your position that the proposed procedures are adequate for the purposes of the Act?

A. Yes.

Q. Before we get to any follow-up questions from the Commission is there anything that I failed to ask you that you think the Commission would find helpful regarding this Testimony?

A. No, I don't think so.

MS. BECKER: With that, I suggest we move to questions.

HEARING OFFICER ORTH: Thank you, Ms. Becker, and thank you, Mr. Chakeres.

Commissioner Russell, would you like to begin the questioning? You can also pass.

COMMISSIONER RUSSELL: Okay. Thank you.

EXAMINATION

BY COMMISSIONER RUSSELL:

Q. Thanks for this presentation, Mr. Chakeres. I think that you are quite eloquent and really zeroed in on some of the concerns that people might have about Public Welfare and changing the arena of Prior Appropriation and changing the processes. I think you covered that or explained that quite clearly. "It's not an issue, it's not a problem. It might come up, but it's not going to be an influence."

I believe I hear you saying that you think that there is merit in

soliciting statements from the different Planning Regions, or each of the Planning Regions about what Public Welfare might be so long as they understand the 4 points or 5 points about, you know, stakeholders -- not "... stakeholders," but Compacts and, you know, Prior Appropriation law and all that kind of stuff.

HEARING OFFICER ORTH: Yes, Commissioner Russell, would you speak into the mic, please.

COMMISSIONER RUSSELL: Yes, I will.

Q. My understanding is you would encourage the Regions to develop Public Welfare Statements. Is that correct?

A. Yes.

Q. And so it kind of fits what we heard earlier about creating some kind of vision for the community or the Region.

The other point I want to ask you about is that you have focused very

specifically on Appropriations and the State Engineer's duties.

It seems like the Regional Plan might have concerns or issues that are separate in the sense of promoting education, or providing organizational support for small rural groups that, on their own, can't articulate the broader needs of their communities easily or, you know, providing for and addressing upland conditions as a project, which the State Engineer wouldn't necessarily have anything to say about.

In that situation not only would you support the development of Public Welfare Statements regionally, but you would encourage them.

A. Yes.

Q. That's great.

It's not entirely clear to me, based on the language of the plan, that those separations are well understood. It seems that perhaps people might think, "The Attorneys are

suggesting to limit it exclusively to just Prior Appropriation issues and State Engineer decisions," but that is not the case.

What I am suggesting is maybe it could be clarified a little bit in the language to state that is not the case. Would that be a reasonable suggestion?

A. Certainly every suggestion that you all give is going to be a reasonable one, but we will look at that and see if there is something that can be done.

Q. Yeah, great.

I think we have heard some remarkably heart-felt Testimony from many different users and groups. I think it's important to try and incorporate some of that sensibility into a Regional Plan that exceeds mere Rules of, you know, assignment of Water Rights and that kind of thing, but to try and get at the larger context of the world we share.

A. I don't disagree.

COMMISSIONER RUSSELL: Thank you. That's my comments.

HEARING OFFICER ORTH: Thank you, Commissioner Russell.

Commissioner García.

COMMISSIONER GARCÍA: Thank you, Mr. Chakeres, for your Testimony today.

EXAMINATION

BY COMMISSIONER GARCIA:

Q. I really enjoyed reading your Written Testimony as well. I appreciate the history that you shared and the narrative you provided today about the origin of Regional Water Planning and Public Welfare. It strikes me that they are closely related when you look at it in the historical context.

My first question, and I think you elaborated on this quite a bit, but just to be certain I understand, it's the position of the

State Engineer's Office that you do not want Public Welfare Statements from Regional Water Plans to be binding.

A. Correct.

Q. Okay. But you would say that the State Engineer could consider Public Welfare Statements from Regional Water Plans.

A. Correct.

Q. Okay. Is that something that the State Engineer does now?

I'm sorry, let me...

Yeah, so I was looking at 16 again. The one thing that I noticed that's different, and I don't know if it's done now, is whether the Permit Application would be Detrimental to the Public Welfare of the State shall be explained in writing.

Is that something that's done now typically?

A. Not on every Application.

In every Application that's reviewed there is a Memo where we

consider every statutory factor, and so there is a written determination on Public Welfare on everything, but we don't do a determination of whether something is, you know, consistent with a Public Welfare Statement for example.

Q. Okay.

In this Rule you're saying it shall explain the reasoning in writing. That's a little bit more or more engagement of the State Engineer in making a decision based on Public Welfare maybe than the status quo. Would you say that?

A. I will say that, yes, I anticipate if we get Public Welfare Statements into this process there will be more engagement on that in writing, yeah.

Q. And so if the State Engineer renders a decision on Public Welfare, and one of the parties doesn't agree with it, they can always appeal.

A. That is correct.

Q. Okay.

Going back to --

A. In the context of an Application.

Q. Understood. Right.

Going back to the history of Public Welfare Regional Water Planning, did I understand correctly or did I interpret it correctly that, as a result of litigation El Paso sued and they won.

Then New Mexico borrowed language from Nebraska such that we could have those criterion in our laws in order to have a basis to deny Water Transfers out of New Mexico. E can't treat exported Water Rights differently in-State, so we have to apply Public Welfare and conservation in-State.

Was Regional Water Planning developed for that purpose, or in part to help define Public Welfare? Is that one of the primary purposes of Regional Water Planning?

A. I wasn't here in the '80s, but I

wouldn't say --
Q. You are young.
A. It was certainly one of the purposes, yes.
Q. Okay. Would you say it was an important --
A. Yes.
Q. Was it --
A. It was a more than a minimal purpose.
Q. A major purpose.
A. As I understand it New Mexico wanted to be able to deny Applications from El Paso by saying, "We have determined through a Regional Planning process how much water we need in the Lower Rio Grande, and export of any amount over that would be contrary to the Public Welfare of that Region."
Q. Okay.
A. I think that was the thinking there.
Q. Understood.
From my perspective, and in hearing that same history, I would say

that it sounds to me like Regional Water Planning, as one of the primary purposes, was to define Public Welfare.

When I was looking at the Statute and the Rule and comparing them -- and I don't have the old Statute in front of me, but it's in this stack, but so I don't have it.

Does the Water Security Planning Act have, to the same extent, language that requires some kind of definition in the plan, in the Regional Water Plans as the original Statute? I mean is it similar?

A. It's a similar level of detail I think is what you're getting at; right?

Q. Yeah, okay.

A. In the Statute itself, I mean, they are different Statutes, but I would agree they both state it at a high level of generality.

Q. I think I heard you say there was 2 procedures in the Rule, and I was taking notes. Could you restate what you said those 2 procedures were?

A. I apologize, I don't have the Statute because literally what I'm trying to track, too, is what the Statute requires.

There is basically a procedure, and the Statute requires a procedure for a Regional Water Planning entity to develop and provide notice to the Commission of issues and concerns related to the Public Welfare of the Planning Region, and that's the first. That's really the State Engineer/Commission-facing procedure.

Then there is a procedure for the Regional Water Planning entity to consider Public Welfare Values and the needs of future generations of New Mexicans, and that's the Council-facing procedure.

Q. Okay. That's helpful.

When I read the first procedure in the Statute it seemed sort of indirect. It's a procedure for the planning entity to develop and provide notice to the Commission of

issues relating to Public Welfare, and that's what you're calling Commission-facing.

A. Yes.

Q. Okay. The second procedure is?

A. Council-facing.

Q. "Council-facing." Okay.

It's also mentioned on page 6. I think it's just saying that each entity shall consider Public Welfare Values.

Is there a difference between Public Welfare and Public Welfare Values?

A. I don't think there is a material difference there.

Q. Okay.

Now in the Rule, I see "Public Welfare" mentioned in the Statute, which is 6 pages, 7 pages, but double-spaced. The Rule has 7 pages single-spaced in tiny font.

I don't know if I missed it, but how many times is "Public Welfare" mentioned in the Rule? Because maybe

I'm missing something.

Do you have that handy?

A. I'm guessing in about 3 or 4 separate sections.

Q. Okay. Yeah.

I see it listed 14B, 14A, 14A(5) -- no; 14A(7).

Then I see it -- I know I saw it one other place, or at least one other place, "Public Welfare Values" on the criteria under 15.

One of my observations is that the Rule only mentions Public Welfare in a way that's it's a laundry list of considerations for Councils during the planning process. When I read the Statute, it looks like Public Welfare is pretty important.

It makes sense if you know the history of Public Welfare and Regional Water Planning. You're like, "Yeah, Public Welfare is a pretty big deal."

There is the PPPs, and then you have Public Welfare on Section C1(c) and Section C1(e). Those are the 2

Commission-facing and Council-facing procedures you mentioned.

Where is the procedure in this Rule to define Public Welfare?

I see that it's a consideration among this laundry list, but if you read this Rule you wouldn't think Public Welfare was such a big deal because it's just right up there with "climate resiliency" and, you know, "domestic use." I think those came out of the Statute somewhere.

I guess my question is if we were writing a Rule that reflects Public Welfare as being important, wouldn't there be like a specific called-out procedure?

Like if it is in the Statute that there is the 2 procedures that you identified, where is the procedure in the Rule, or am I missing it?

A. Well I mean there is a whole section, you know, that's just about Public Welfare; right? That is Section 16. Granted that is once it

gets to the State Engineer, but we're talking a lot about Public Welfare.

It is an important consideration and I don't want to quibble about sort of the drafting.

But yeah, I don't mean to...

I mean I understand the point. In the procedures given to the Planning Councils there is not a lot of discussion about what to do on Public Welfare, I agree with the point.

What I said earlier is I think the reason is there is probably going to be differences among the Councils in the sequencing of when to look at that and how deeply to go into it. We don't want other work held up because of discussions about Public Welfare if the Councils weren't ready to do that.

We felt like we really did need to call out the ultimate sort of payoff of where that goes in terms of the State Engineer. I think that's a pretty prominent part of the Rule, but

I'm not going to disagree with you at all that the Rule is not voluminous or lengthy with respect to how Councils discuss Public Welfare because it certainly isn't.

Q. Right. That's correct.

I mean 16 is a section just on Public Welfare, but it's a very terse statement saying that it's not binding. It's okay, it's just not substantive in terms of the procedure and process for defining Public Welfare, and I think it's not there.

I think there is a tension, in speaking of holding up other work, between PPPs and Public Welfare, because I think there is a desire for these Regional Water Plans to prioritize projects and make it practical, but also think there is a desire in communities to define Public Welfare in a substantive way that helps them define their future and shape their future.

I also think there is a

tension, as you stated, with this "floor of Public Welfare" that the State is saying.

What I see in the Rule is that the Rule is almost trying to prescribe what Public Welfare is with these 4 considerations or criteria, including Compact Compliance, but it doesn't really say those are Public Welfare, it just says they are objectives. I mean it says:

"Councils shall consider the following statewide objectives..."

You are then defining them as a "floor for Public Welfare."

In a way we're -- and I don't disagree with those. I don't disagree with those, you know. I think those are well-reasoned, but it's also, you know, sort of prescribing what Public Welfare is before they've had a chance to define Public Welfare on their own.

In other words, "Public Welfare" is just on a list of a whole

bunch of other things, you know. It seems to me that if we're really going to make Public Welfare an important part of these plans, the procedure for defining it should be more explicit; that's a statement, not a question.

How do you see, in the substance of a plan, these Regional Councils considering these statewide objectives, or these 4?

A. I think it's going to depend on the Region.

We heard from, for example, Tribal representatives about concerns where they think they have already figured out the Regional Plan and it's their Water Rights Settlement concerning their Tribal Water Rights.

I tend to agree with respect to those groups that have already worked that out, because the process that went into negotiating a number of those Tribal Water Rights Settlements was very inclusive and included a number of neighboring Acequias,

municipalities, other water-using communities. Those groups want to realize and effectuate the Settlement that they have worked so hard on.

Then there's other Regions where there either are no Tribes, or they haven't reached a Settlement yet, and so I think it's not going to be uniform.

It is an excellent question, and what I hope is that, again, this is the floor. These are really, I think, going to be guardrails pretty far outside of where I hope the Regional Councils go.

I mean if they are really seriously talking about, "Well," you know, "Compact be damned," we've got some big issues; right? I'm hoping it is not, and I hoping that those statewide objectives that are the floor aren't big pinch-points. They should be pretty universally accepted.

If people have those as background principles going in, they

don't have to be applied over and over again. It may be the case, though, in those areas where there are those Regional Settlements, that people have to be reminded, "No, we have already decided that and," you know, "leasing of water from this party to this party is not allowed," or something like that.

But in essence I think it will vary.

Q. Yeah, there was very good Testimony on the settlements yesterday.

A. Yeah.

Q. Just one quick question on that:

Would you see Active Water Resource Management as Public Welfare?

A. So Active Water Resource Management can include the enforcement of what are called, you know, for everybody and for the record, "Shortage Sharing Agreements." Those are really mini-Settlements of different parties where they get together and agree, "Okay. The Senior

is not going to require complete curtailment of some of the Juniors as long as certain conditions are met."

Once those are agreed to by the parties and accepted by the State Engineer, we really want to see those succeed. They can oftentimes result in much better outcomes for the water user, and even the Senior water users than strict Priority Administration.

And so if, again, you know, whatever the composition of a Planning Council says, "Well," you know, "we're going to propose something that undermines those Shortage Sharing Agreements," those are really accepted under the umbrella of Active Water Resource Management, and that's why we included Active Water Resource Management there.

Q. Okay. Thank you. That's very helpful.

Just a last question:

In terms of how Public Welfare is defined...

This is not so much a legal question, it's more like a policy question:

I think one of the reasons that you see some advocates gravitate towards Public Welfare being so important is because it's one of the few openings that communities have for articulating socioeconomic or cultural concerns or how that relates to water.

There is also a tension or there is a concern that because of, you know, demographics or something, if it's just left to pure numbers, then Public Welfare can be defined by who benefits by the numbers. If you come from a minority group, that can be really challenging.

Are there any examples from Public policy on how, you know, democracies resolve this tension when you're trying to define the common good or Public Welfare, and try to balance those different interests?

A. Well that's a very good and very

deep question, and I am sorry to say, Commissioner, I don't know that I have an answer offhand for that.

I'll have to think about that; it was a great question.

COMMISSIONER GARCÍA: Thank you for your Testimony. I appreciate it.

HEARING OFFICER ORTH: And Commissioner Chávez has questions of Mr. Chakeres.

COMMISSIONER CHAVEZ: I want to say, Mr. Chakeres, thank you for your Testimony. I really appreciate your summary, and it was a good explanation of your points.

EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. In your Testimony you talked about values, like different areas have different values such as, you know, Ag, or municipal users or whatever. What if a Region cannot agree on a Public Welfare goal or statement, what happens then?

A. Madam Hearing Officer, Commissioner Chávez:

That's entirely possible. That's one of the reasons we didn't want to have that be a stopping point or a stage gate where we can't proceed through the planning process.

There may be other things that Regions can agree on and put into a Regional Plan, and we didn't want to jeopardize that.

We hope that we can get at least some consensus on Public Welfare from the Regions, but you won't get...

I mean everyone has different views even within Regions. We won't get unanimity on all of it, but if we can't get unanimity on any of it we still think that those Regions can come forward with plans on, you know, topics that they can agree on.

Q. Yeah, that was my concern, because, you know, in the Four Corners area, the municipalities might not even agree in that area, much less the

whole Region.

Also yesterday there was a discussion about Subregions and how that might play into the maps, I guess, of the Regions. Do you envision a Region having more than 1 Public Welfare Statement if there's Subregions?

A. I think there could be multiple statements. If a whole Region doesn't sign on to a Public Welfare Statement, that might be indicative for the State Engineer of, you know, maybe what the reach is of that statement.

But it could be that there are multiple, yeah, I think that's possible.

Q. Okay. I have one last question:

Do you think it is a Legislative exercise for Public Welfare Statements?

A. That's another excellent question:

I think that if handled the wrong way, it does start looking like

legislating.

I think what we want, or where we want to draw the line is getting people's input about what they believe the Public Welfare Values are going to be, and then the State Engineer, who has the legal and political accountability to make those determinations, can make them. That is then checked either politically or in the courts.

I think it absolutely has the risk of being a Legislative determination, and so that's why we can't have this be binding on the State Engineer.

COMMISSIONER CHAVEZ: Thank you. That's all I have.

HEARING OFFICER ORTH: Thank you.

Commissioner Carrasco.

COMMISSIONER CARRASCO: Yes.

EXAMINATION

BY COMMISSIONER CARRASCO:

Q. Again, thank you for the

Testimony, you know, and frankly thank you for your service to the State in all the capacities that you serve in. I absolutely appreciate it.

I guess I still just struggle a little bit with the prohibition within the Water Security Act, as you testified, in Section 3.

I think you have the Act in front of you now.

A. Yes.

Q. The inclusion of Section 16 in the plan or in the Rule, it is, you know, fairly plain that, you know, it shouldn't abridge or affect or in any way impact water. It looked like, to me, from your Testimony -- and if you could clarify it -- that you're drawing that as, "Well it will only affect it if we have an Application or if we have some change to the Water Rights. It doesn't change an existing an right, and that's how we comply with the Statute."

If you could explain that

position a little better.

A. Thank you, Commissioner.

That's generally the position. I would also add that it's also important that we not make these binding on the State Engineer; otherwise, I do think that it would be abridging Water Rights or have a significant risk of that.

To be clear, if somebody wants to take it out, or if 16 comes out and we don't have any of that in here, tomorrow if somebody applies to change a Water Right, the State Engineer still has to decide if it's consistent with the Public Welfare. Anybody who could be affected could then come forward and Protest, and try to articulate that.

If they then don't like what the State Engineer thinks, they can still go to a District Court Judge and get a Judge deciding what Public Welfare is, and that's just the nature of the scheme that the Legislature put

together here.

What I hope happens is that we can get ahead of what I think is an unpredictable process, and I don't like unpredictable especially in water.

What I hope is that if we get these values in a considered, reasoned way to the State Engineer, the State Engineer can make whatever decision the State Engineer is going to make.

Ultimately, if an Applicant doesn't like that, they can go to District Court, but we have a better defined, better understood reason for defining an incredibly vague term, "Public Welfare," than we do right now, which is a pretty ad-hoc litigation-based method.

But I agree with you that Section 3 of the Act is critical. We want some more reassurances for folks, but if it's not binding on the State Engineer to carry these out, I think we're consistent with the Act.

Q. In your opinion, if Section 16

came out of the Rule would the State Engineer process these Applications any differently?

A. I don't know.

If Section 16 came out and a Public Welfare Statement came in to the State Engineer, or to the Interstate Stream Commission, really I don't know what the State Engineer would do with that.

Q. From your Testimony, the direction that's given to the District Offices, or the Water Rights Specialists who write these memos who go through your WRAP program, where you have provided the District Offices with some guidance, would that not still be the process if these Regional Councils came up with Public Welfare Statements?

A. Commissioner, I don't mean to, you know, be evasive on that honestly, but it would be the State Engineer's call at that point.

I think if I'm still there

under the current regime, yes, we would absolutely want our District Offices to look at the Public Welfare Statements that came in, but there is nothing that would require that. If I move on and the State Engineer moves on, there is nothing to say that would definitely happen.

Q. From a legal standpoint is there a difference between the words "shall" and "will" and "may"?

A. It depends on where in the sentence, et cetera, it's being used, but as to, "may," and I'm not a grammar nerd, there is different parts of a sentence where "may" modifies.

I think with that sentence what we were thinking the "may" modifier applied to was if the State Engineer determines it's, you know, important to Public Welfare, the State Engineer "may" consider it, you know, not some other interpretation.

Yes, "shall" and "may" can be different certainly, but I think "may"

was modifying a different part of that sentence.

Q. Would you agree that with "shall," it becomes more of a requirement?

A. Generally speaking, yes.

Q. So today, each of those Statutes that's referred to under 16A have a requirement for a consideration of actions that are not detrimental to Public Welfare. Is that correct?

A. That's correct.

Q. Okay. I'm going to switch gears kind of completely, and I don't know if you're the right victim, but I'll ask anyway:

Within the Statute there was kind of a positive statement that required this Commission, under 4, and I'll just read it to you. It's regarding development of alternative administration through Active Water Resource Managements:

"If prioritized by the Region that may be submitted

to the State Engineer and affects the Indian Nations, Tribes, and pueblos for approval [SIC]."

A. Okay.

Q. In the Rule, as it's written, the main reference to these Active Water Resource Managements is really a limitation to the development of plans by these Councils such that they have to be in compliance with this, whereas it looked like, to me, that the Statute asked to support, in a proactive manner, input from these Regional Planning groups to the State Engineer and the Tribes and Pueblos as equal government agencies.

That seems to be missing from the Rule; the fact that we are supposed to be proactively supporting the development or this process through this planning.

I can see it in my little corner of the world, the Lower Rio Grande, that if our water management,

our group that's now working and will become a Regional Planning Council, it's going to have to be critical in the development of this Alternative Water Resource Management.

How do we, instead of using it as a gate to what's an acceptable plan, promote in a proactive way within this Rule the role of these Councils in the development or the input of this information to develop these Alternative Water Resource Management plans?

A. Commissioner, that's an excellent point:

I guess I don't know if I'm the right victim, but my take on it is I don't think that there is any intention by including "Active Water Resource Management" in the "Statewide Objectives" to be considered as we are not going to be supporting the development of those Alternative Administration Plans from the input of the Councils.

The way the Statute is written, that's not a mandate to be put into the Rule, and so that's, I think, why that's not here in the Rule, although others might have a little bit more information on that.

It is entirely, absolutely, 100% our goal and intention that this planning process and what's developed out of this is going to undergird and support the development of Alternative Administration Plans.

COMMISSIONER CARRASCO: Thank you.

That's all, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you, Commissioner Carrasco.

Let me note that it is 4:00 o'clock.

We didn't have anyone reserve a Comment time for 4:00, but in the event you're on the platform or in the room hoping to offer Comment, just know that we're going to complete Mr. Chakeres' questioning and I'll

invite any Comment to be given.

Commissioner Anderson.

SECRETARY ANDERSON: Thank you, Mr. Chakeres. Great job with the Testimony, and I don't have any questions.

I really appreciate all of the discussion and questions from all the Commissioners on this, and the public. It's a really important topic, and I think this has been really helpful to hear all of this input. Thank you.

HEARING OFFICER ORTH: Thank you.

Vice Chair Timmons.

VICE CHAIR TIMMONS: Thank you. I just have a couple of clarifying questions, Mr. Chakeres.

EXAMINATION

BY VICE CHAIR TIMMONS:

Q. I can't say your last name correctly; Chakeres? Is that good enough?

A. That's good enough.

Q. Public Welfare Statements. Do you see those as Policies under the PPPs, one of the P's of the PPPs, Or is it somewhere else?

A. I wasn't thinking of them along those lines, but I mean yeah.

Q. Okay. Yeah. I guess I'm just curious because if it is under "Policies," and I think what you said was there is nothing in the Councils' roles that are necessarily binding policy, but yet we have a section under PPPs related to "Policies."

I guess were you kind of talking about something else more related to other policies, but not "Policies" under the PPPs?

A. I'm sorry, "... other policies, but not "Policies" under the PPPs."

Q. Yeah.

If Public Welfare isn't a Policy under the PPPs, and it is under a different section of the Rule, maybe it should be part of a Template that falls under the PPPs is I guess what

I'm trying to figure out.

A. I hope this is responsive, and again, all these questions are great:

A PPP policy could be something like, you know...

This is a bit of a third rail, and this is going to be a challenging issue:

You heard a lot of Comment yesterday about Transfers of Water Rights in the Middle Rio Grande. Let's say that a Planning Region comes up with a proposed Policy about capping Transfers beyond a certain amount or something else. That, to me, would be a proposed Policy as one of the PPPs. I don't think of that as really -- I'm not saying I endorse that, but you can tell people want to talk about that in the Middle Rio Grande.

If it is the Public Welfare Values, again, I don't want to prescribe what they should look like, but I'm more thinking that those are more aspirational as a thing that needs

protecting.

Another thing I didn't talk about much, so Public Welfare is to be considered by the State Engineer in addition to Impairment of Water Rights. I think of those, and whatever the Legislature meant by "Public Welfare," it meant something different from and in addition to Impairment of Water Rights.

If, again, taking the Middle Rio Grande as an example, maybe a value is maintaining streamflow in the Rio Grande through certain reaches under a certain range of hydrologic conditions because it's really important for people and environmental values to keep streamflow in there.

Again, I'm not endorsing any specific Policies, I'm just giving you an example.

That would not tell you the Policy that would have to be taken out in order to get to that value, but it would be telling you what the value is

or what the community wanted to see.

That's why I'm not thinking of it as a Policy in the PPP, and I hope that helps.

Q. Okay. Yeah, I think that helps. I was just kind of curious what your personal perspective was.

I guess, you know, just conceptually it's really hard for me to wrap my head around an entire Council, even if it's just my household, to come up with an agreed or shared value that we are all in alignment with.

I think this is a really important topic to try to align with, but perhaps impossible to have an entire Council in agreement on what their shared values are for Public Welfare. At the same time, that's part of the exercise and part of the mess of being humans in this world.

VICE CHAIR TIMMONS: I don't have any more specific questions, it is just kind of conceptual stuff at this point.

HEARING OFFICER ORTH: Thank you, Vice Chair.

On the platform, Commissioner Balok has questions.

COMMISSIONER BALOK: Thank you, Madam Hearing Officer and Mr. Chakeres. I always enjoy the opportunity to partake of some of your wisdom. You have spoke quite eloquently, and I appreciate that.

EXAMINATION

BY COMMISSIONER BALOK:

Q. I am more than a little consternated by this concept of articulating Public Welfare. Usually as a Rule I try not to entertain hypotheticals because I find the world vexing enough as it is. Now we're looking at a scenario where a Region comes up with their definition of Public Welfare in the way they see it.

The State Engineer inevitably at some point is going to be weighing a decision that very well could be in

conflict with what their definition of "Public Welfare" is as it relates to, you know, particularly in this hypothetical, a larger urban area.

Would you say that these Regions, by trying to articulate that definition of Public Welfare, that strengthens their position when it's weighed, as the State Engineer tries to "Sophie's Choice" this larger urban area with a more rural area for example?

A. I think your hunch is probably correct that in a subsequent legal case, if a Region has stated a Public Welfare value, that would be given some weight, I don't disagree with that.

COMMISSION BALOK: I think you have done a pretty good job of checking off the questions that I've had up until that point, but once again I appreciate your Comments and getting some insight on your wisdom. Thank you.

MR. CHAKERES: Thank you,

Commissioner.

HEARING OFFICER ORTH: Thank you.

Commissioner Suina.

COMMISSIONER SUINA: Thank you, Madam Hearing Officer.

Thank you, Mr. Chakeres, for your Testimony.

EXAMINATION

BY COMMISSIONER SUINA:

Q. This Public Welfare term, I'm still getting my head around how we're using it in different contexts depending on, you know, what's in the WSPA and how we're using it in this Rule, and how the State Engineer uses it.

It seems like there is a lot of overlap. I mean can I correctly say -- well can you clarify that?

I think a previous Commissioner asked a similar question, but what will come out of this Regional Planning process under these Rules and Regulations that would not affect the

Administration of Water Rights and management under the State Engineer's Office, or is it, as you just said, that there is going to be some situations possibly...

Again, I don't want to talk hypotheticals, but I just keep going maybe just one step further in saying it would be a document that could be used in some decisions or some situations in terms of what a Region would define as Public Welfare.

If you can just elaborate a little bit more, Thank you.

A. Commissioner, the only relevance pertaining to the Administration of Water Rights would come when there is an Application before the State Engineer, and any subsequent litigation.

What Commissioner Balok was asking about is if there is a dispute in a legal case, and the State Engineer decides one thing, whatever the State Engineer decides, and then some party

in that dispute has a Regional Plan endorsing their view of Public Welfare behind them, would a Judge find that somewhat persuasive?

I think while that is impossible to say in a hypothetical, I think it would have some relevance, but I'm going to talk more specifics:

If we are looking at a Tribal Water Right, those will never come before the State Engineer on an Application. We do not have the jurisdiction to govern Change Procedures. I can say with more confidence that there would be no effect on the administration of those Water Rights partly because we don't administer changes to those Water Rights.

I hope that helps, but if not, please follow up.

Q. Yes, I appreciate that.

I guess with that response, would your response be different in the instances where Tribal Water

Rights are Adjudicated, or Tribal Water Rights are in Settlement, or Tribal Water Rights are Unadjudicated?

A. Commissioner, there is a little bit of nuance across the Settlements we have already completed, but by and large I would say that doesn't change. Even after Water Rights are settled, in the Settlements we have completed to date, there are extremely, extremely narrow circumstances where the State Engineer would have any say-so over any proposed Transfers, and that's only by consent of the Tribe.

I don't think the answer changes depending on whether the Water Rights are Settled, Adjudicated, or not yet Settled or Adjudicated.

Q. Thank you for that, Mr. Chakeres.

I want to diverge a little bit and explore Public Welfare a little more.

As Commissioner García said I think in this hearing or in this

public forum, the understanding of the term "Public Welfare" has kind of evolved over the years, and you gave very informational and great background, so I appreciate you sharing that.

With that said, as we go forward are you comfortable, from your perspective...

One more question:

Did you hear some of the Testimony yesterday from the Tribal leadership?

A. Yes, I did.

Q. With that Testimony, and given your background and your position in the State Engineer's Office, do you see any need to adjust the language of either "Public Welfare" or other sections of the Proposed Rule?

A. I thought a lot of the Testimony and Comment was very compelling, and I have also been in discussions with ISC Staff about potentially making changes. I'm not probably the best person to deliver those proposals, and

I think we are still bringing those forward and hoping to present them tomorrow.

But yes, we are considering changes in light of that Testimony or Comment.

Q. Thank you for that, Mr. Chakeres.

I guess, one further question:

In terms of how the current Rule is proposed, and then potentially additional revisions as this process evolves, do you feel comfortable in that this Rule, from the State Engineer's point of view, does not impair or affect any Pueblo or Tribe's Prior and Paramount Water Rights?

A. I am confident of that, yes.

COMMISSIONER SUINA: Thank you, Mr. Chakeres.

I don't have any further questions at this point, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you, Commissioner Suina.

Chair Sanchez.

CHAIRMAN SANCHEZ: No additional questions.

Thank you for the excellent Testimony.

HEARING OFFICER ORTH: Thank you all.

Ms. Becker.

MS. BECKER: I do have two topic areas to follow up as a result of Commission questions when you decide.

HEARING OFFICER ORTH: Go ahead.

REDIRECT EXAMINATION

BY MS. BECKER:

Q. The first one is by Commissioner García. She was asking about a procedure to define Public Welfare.

There is no statutory requirement to define Public Welfare, is there.

A. No, I don't think so. The procedure is for transmittal of the definition once developed I believe.

Q. Right.

If you will read with me in the Act, the procedure is for the entity to.

"... consider Public Welfare Values and the needs of future generations of New Mexico."

That's the language in the Act; correct?

A. Yes. For the Council-directed procedure, yes.

Q. Okay. And so are you aware that the Act is organized by what I believe was referred to as the:

"3 Cs: Composition; Consideration; and, Criteria."

A. Yes.

Q. Is there a procedure, under "Consideration" that the Councils shall consider Public Welfare Values?

A. Yes, there is.

Q. Is there a requirement in the "Criteria" section that Councils must or shall -- the language is "shall" --

document how Public Welfare was considered?

A. I wouldn't mind being directed to where that may be.

Q. Okay. I'm specifically looking at Section 15A, Paragraph (6).

A. Yes, you're correct.

Q. Previously, just so that we're clear on the record, that "... shall consider..." is Section 14(A)(7).

A. That's correct.

Q. Okay. Why is it advantageous then, or why does the Office of the State Engineer not define Public Welfare?

A. It's too big and broad a concept for what I think is the State Engineer expertise and ability to define. It's probably too big a concept for anybody to define.

I think that getting the input from the Regions will help guide that decisionmaking.

As I alluded to in answer to the Commission's Comments, in the

absence of formalizing this input, we're still going to have debates about what "Public Welfare" means, and that's a necessary consequence of our permitting Statutes.

It would likely be an ad-hoc litigation basis rather than what I think would be a more reasoned consideration by experts if we don't have more input earlier.

Q. Great.

Then in response to Commissioner Carrasco's questions he identified something that I think didn't get teased out, which is the Regional and the State component of this.

When you look at the 9 statutes that are in Section 16, in each of those statutes is it the Office of the State Engineer that must consider the Public Welfare of the State?

A. Yes.

Q. And in Paragraph C it identifies

that:

"The State Engineer, in determining whether a Regional Public Welfare issue identified by a Council is relevant to the determination of whether a particular Permit Application would be Detrimental to the Public Welfare of the State, shall explain the reasoning in writing."

First off, did I read that correctly?

A. I wasn't following word-for-word, but yes, I believe so.

Q. Secondly, is there then sort of, as I believe you used the term, "levity," or a consideration of relevance of a Public Welfare value of a Region in the context of the Public Welfare of the State?

A. That is something to be weighed by the State Engineer.

Another reason why I don't

think these can be binding on the State Engineer, and I think that's also relevant to Commissioner Balok's concern, which again, these are all valid, very strong concerns that weigh on all these decisions.

If you have a Region that is just looking at sort of a narrower definition of values that might exclude, say, rural or agricultural values, the State Engineer would have the ability to say, "Well I can see the broader perspective here."

"A municipal-dominated Region," again just to take an example, "is looking at that municipality's future, but I can also look at the future of the rural areas of the ranchers, of the farmers here, and so I'm not necessarily going to be bound by just a more narrow definition of Public Welfare there."

Q. Thank you.

Last question:

Commissioner Suina identified

and asked if there would be any further changes as a result of Comments made yesterday specifically from Pueblo leadership, and you said there may be, but I just want to be certain that you are not proposing any changes to Section 16. Is that correct?

A. In addition to what I stated earlier, no. I think that those were earlier in the Rule where the asks were made.

I didn't hear, yesterday, any Comments regarding Section 16 from Tribal leadership, so we're looking at other sections, potentially, to be responsive to those concerns.

MS. BECKER: Thank you very much.

No further questions.

HEARING OFFICER ORTH: Thank you, Ms. Becker and Mr. Chakeres.

Commissioner Russell.

COMMISSIONER RUSSELL: Sorry, I just have one quick Comment:

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FURTHER EXAMINATION

BY COMMISSIONER RUSSELL:

Q. It strikes me that the language in the Act does not require a Public Welfare Statement, and it doesn't require a Region to come up with a unified Public Welfare Statement, rather it suggests that issues and concerns regarding Public Welfare be communicated to the Commission.

Does that sound correct to you as a means of eliciting thinking about Public Welfare without boxing people in?

A. I think that's an accurate read of the Statute, and I think that different Regions may approach that differently.

We may have Regions, like Commissioner Timmons' family, that can't agree on much, and we may have the Regions that say, "No, we're going to have a nice, shiny statement that comprehensively characterizes this."

COMMISSIONER RUSSELL: Thank you.

HEARING OFFICER ORTH: All right. Thank you.

Commissioner García.

COMMISSIONER GARCÍA: This will be a short question:

FURTHER EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you for everything that you've provided to the Commission today.

I was going to ask about something that came up yesterday on Public Welfare:

One of the commenters was making a distinction, but I'm not too sure. I didn't fully understand the Comment, but they were pointing out that the Statute has "Public Welfare" and "future generations" in the same phrase, and the Rule doesn't. What effect does that have?

I mean do you think consideration of future generations is inherently Public Welfare, or what is

your view on that?

A. I'll try to give a brief answer:

Like Commissioner Carrasco, you all are, again, zeroing in on very good grammar issues, and I think they are related.

The State Engineer, in looking at Impairment of Water Rights, already looks at the lifespan over which, you know, Water Rights could be impaired.

The way that the Commenter was characterizing it yesterday, not to take anything away from the Commenter, but about what all that means, it looked a lot like our Impairment Analysis that we already do.

We're not really great about communicating what we do right now, but I think that certainly sustainability is deeply and closely related to Public Welfare, so I don't think they are coextensive.

I think we chose to tease

them both out separately in the drafting of the Rule, but are they related certainly.

COMMISSIONER GARCÍA: Okay. Thank you.

HEARING OFFICER ORTH: All right. Commissioner Suina has a question.

We really do need to take a break soon, Commissioner Suina, but go ahead.

COMMISSIONER SUINA: Yes, thank you. I'll try to make this fast, Madam Hearing Officer:

FURTHER EXAMINATION

BY COMMISSIONER SUINA:

Q. In relation to what Ms. Becker had questioned you on in terms of the proposed changes that may evolve here in relation to some of the questions brought up yesterday by WSTAC, and the recommendations as well by Tribal leadership, one of the aspects was in relation to Tribal consent.

In relation to Tribal consent

as it relates to when certain milestones are achieved, or critical milestones in the planning process, the way I'm reading the Rule and the process in the Rule, and in defining a Region, and in defining and looking at Public Welfare, would some of those proposed changes be with regard to supporting Tribal consent at critical points, if I can frame it this way, address and then enable Tribes and Pueblos to have a strong voice with consent in defining Public Welfare in these Rules and Regulations for a Region?

A. Thank you, Commissioner; that's an excellent point.

We obviously had been looking very hard at the consent request from the WSTAC and as related in Tribal Comments. It hadn't been framed in terms of including Public Welfare at those critical stages, but now that you state it there is more to think about, so we will look at that.

HEARING OFFICER ORTH: All right.

COMMISSIONER SUINA: Thank you.

HEARING OFFICER ORTH: Thank you.

We need a short break. We do have at least two Commenters wishing to offer a brief Comment, but we need a break before then, so let's just take eight minutes if we could.

(The Evidentiary Hearing recessed from 4:27 p.m. to 4:36 p.m.)

HEARING OFFICER ORTH: Let's come back from the break, please.

Let's come back from the break, please.

We are back after a short break. I have a note around 2 folks desiring to offer Public Comment during this session.

I believe Mr. Trujillo is in the room, Mr. Harold Trujillo.

Sir, if you would, please come up to the podium.

I ask, before you begin, that you spell your first and last name and state your affiliation.

MR. HAROLD TRUJILLO: Hello; I am Harold Trujillo. That is H-A-R-O-L-D, middle initial J., T-R-U-J-I-L-L-O. I am President of the New Mexico Acequia Association.

HEARING OFFICER ORTH: Go ahead.

HAROLD TRUJILLO,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. HAROLD TRUJILLO: Okay. I am one of the founding members of the New Mexico Acequia Association. I am also President of a local Acequia in Mora County, La Isla. We are responsible for operating Morphy Lake Dam. I think that's a unique community project that our community got started since 1861.

We have a long history of working on Acequia issues. I am also a Registered Professional Engineer. I've worked with the State for over

40 years, and I've done a lot of Rules in my time to administer programs.

One of the things I would encourage in this Rulemaking is that the information in the Rule is adequate for a Program Manager to administer the Rules, because I have found myself in many cases when you develop a Rule, some sections are not clear. You need to have legal review and legal determination, right, to implement a program.

Sometimes that changes; right? From administration to administration. If the Rules are not clear, you're constantly referring questions to the Attorneys. If you have different administrations, you have different points of view or different Attorneys will have different points of view. It makes it hard for a Program Manager to really implement these programs if the Rules are not clear.

I would like to repeat some

of the concerns we have in the Rule:

You know, we certainly are concerned about adding the words, "political subdivisions." I think it clarifies that there are a lot of entities that manage water in the State, small entities, Acequias, you know, Rural Domestics, so I think it would be helpful to have in the Rule that clarification.

Also we met as a group, you know, with our membership, and they considered creation of an Advisory Group. That's important, you know, to make sure that we have all the input right from the stakeholders, to make sure that the information provided to the group representatives, you know, and the ideas, you know, and points of view, right, of the different stakeholders.

We also are interested, right, that the ISC, you know, provide facilitation, you know, and guidance in making sure that these groups are

functional.

Also, you know, it's recommended that we use, perhaps, the Regions that the COGs use, Consular Governments. It's certainly a group that's recognized currently by the State; right? I think most administrative people in government and the Legislature understands, you know, those groups.

Those would be important, I think, and helpful ideas, you know, to make, you know, this whole process work.

You know, one of the concerns we have is that, you know, we don't want to get into Condemnation of Water Rights. I ad experience in the last Water Plan that was done in the Region right where Mora and San Miguel Counties meet. There was a lot of representation, you know, from, you know, public entities.

One of the things I also was concerned about during the process is,

you know, mixing of watersheds; right? You have the Canadian Watershed, and then in the case of Las Vegas, right, there is the Pecos Watershed. You've kind of got the feeling, right, that you have one watershed that has, water, right, trying to connect with a watershed that doesn't have water.

We know that historically, you know, a lot of the Regional Plans rely on water coming from other plans; right? So it's a big challenge for us. I hope that, you know, these Rules can help deal with that challenge. Thank you.

HEARING OFFICER ORTH: Thank you, Mr. Trujillo.

Are there Commission questions of Mr. Trujillo?

No.

Thank you very much.

MR. HAROLD TRUJILLO: Thank you.

HEARING OFFICER ORTH: I believe we have Sylvia Ernestina Vergara online.

Ms. Vergara.

SYLVIA ENESTINA VERGARA,
after having been first called,
was examined and testified as follows:

PUBLIC COMMENT

BY SYLVIA ERNESTINA VERGARA: Hello. Good afternoon, and thank you all. This is a wonderful, wonderful topic.

I am a Paciente, and I have an agricultural business called Tierra Milagro, which is an orchard, farm, and a nature santuario. I have been on my Tierra Milagro for nearly 50 years.

I have been a 2-time Commissioner of the New Mexico Acequia Association, and of my ditch of the Acequia called de Acequia del Medio, and so I have been in close contact with water for the last 50 years almost.

In a sense I have, over time, seen things and experienced things.

My feeling is that I was just delighted that you are so involved with Public Welfare Values and wanting to define it. Personally, I do have a definition, and I do believe it can be defined:

The first thing I did was look up the word "Welfare," which means health, happiness, and economic well-being. Well I think the very first thing that's important is the health of the water because we are about like 72% water ourselves. If we have healthy water, that will help us to be healthy. If we have sick water, which is polluted water, then we will probably be sick also.

In that sense I would consider that extremely important, because in our world we have very little potable water, very little drinking water, so it's very precious.

Now that water is also very important for agriculture and how our food grows. We want to have healthy

food, so healthy water produces healthy food. That is very important.

Also education is really important. I remember being on the debate team in Speech in high school, and any learning about water can really happen at early ages.

Definitions and discussions about water and what is water, and what is "Welfare" concerning water, how does it impact us?

I consider education to be extremely important. It will certainly help people to not make the water sick by polluting it, or at least that's my hope. In that sense I see these different entities as really having at least, perhaps, those things in common.

We ave examples, especially through the Acequia Association and experience with Acequias, we have a wonderful example called "repartamiento," which is about sharing the water equitably among the different

Acequias. Those are the different ditches that feed water to the different parcientes, owners, landowners, and farmers.

We have never not rationed the water when we've had to do this. This has been done for centuries upon centuries, and so that's why we exist today.

In that sense we have a model already in place that has succeeded for centuries on how to share water. When you have grown up with that, you know that you can expect that, and that puts an equitable essence into the equal and just way of sharing water.

I would say that those are the most important things concerning Public Welfare. It serves as the definition of being healthy, happy, and also it does impact our economic stability. All of those I feel really go well together.

Also education is absolutely essential, and the many different

perspectives and points of view.

Those are my Comments, thank you.

HEARING OFFICER ORTH: Thank you, Ms. Vergara.

As we are making a transcript, would you please spell your name and also the name of your orchard.

MS. SYLVIA ERNESTINA VERGARA: Okay. My name is Sylvia, that's S-Y-L-V-I-A.

I used my middle name also, Ernestina, and that's E-R-N-E-S-T-I-N-A.

My last name is Vergara, that's V-E-R-G-A-R-A. That's like V in "Veronica"; okay? That's my name.

My entity is called Tierra Milagro, that's the name of my orchard, farm, and nature santuario.

"Tierra Milagro" means miraculous earth.

"Nature santuario" means nature sanctuary, so it's an orchard, farm, and nature sanctuary.

I'm a parciente on the Acequia del Medio, and I have in the past been a 2-time Commissioner of the Acequia del Medio, and also a delegate in the New Mexico Acequia Association.

HEARING OFFICER ORTH: Thank you very much.

Are there Commissioner questions of Ms. Vergara.

No.

Thank you very much, Ms. Vergara.

Let me ask if there is anyone else on the platform who would like to offer Comment at this time. We will also be here tomorrow, and you can also offer Comment in the morning.

Okay. Is there anyone else in the room?

No.

Thank you all. We're going to break for the day; it's about 10 of --

Wait. Is this...

No one else is online.

All right. Thank you.

We're going to break for the day. It's 10 of 5:00 and we will see you tomorrow morning at 9:00. Thank you very much.

(The Evidentiary Hearing adjourned at 4:50 p.m.).

WITNESS SIGNATURE/CORRECTION PAGE

If there are any typographical errors to your Testimony, please indicate them below:

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I, NATHANIAL "NAT" CHAKERES do hereby certify that I have read the foregoing pages of my Testimony as transcribed, and that the same is a true and correct transcript of the Testimony given by me on THURSDAY, OCTOBER 16, 2025, except for the changes made.

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DATE SIGNED NATHANIAL NAT CHAKERES

STATE OF NEW MEXICO

INTERSTATE STREAM COMMISSION

IN THE MATTER OF PROPOSED NEW Rule 19.25.16 NMAC - Regional Water Security Planning,	NMISC NO.: 25-01(R)
New Mexico Interstate Stream Commission Water Planning Program.	

BEFORE THE HONORABLE FELICIA L. ORTH

THURSDAY, OCTOBER 16, 2025

1:03 P.M.

PUBLIC COMMENT AND

EVIDENTIARY HEARING VOLUME II

REPORTER'S CERTIFICATE

I, DAVID M. LEE, RMR, CRR, CERTIFICATE NUMBER 50391, NEW MEXICO CCR NUMBER 537, DO HEREBY CERTIFY that on THURSDAY, OCTOBER 16, 2025, the Proceedings in the above-captioned matter was transcribed by me, and that I did report in stenographic shorthand the Proceedings set forth herein. The foregoing pages are a true and correct transcription, all done to the best of my ability.

I FURTHER CERTIFY that I am neither employed by, nor related to, nor contracted with (unless excepted by the Rules) any of the parties or Attorneys In this case, and that I have no interest whatsoever in the final disposition of this case in any court.

DATED at Santa Fe, New Mexico, this 28TH day of OCTOBER, 2025.



DAVID M. LEE, RMR, CCR
New Mexico CCR Number 537
License Expires: 12/31/2025

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STATE OF NEW MEXICO

INTERSTATE STREAM COMMISSION

IN THE MATTER OF PROPOSED NEW RULE 19.25.16 NMAC - Regional Water Security Planning, New Mexico Interstate Stream Commission Water Planning Program.	NMISC NO.: 25-01(R)

BEFORE THE HONORABLE FELICIA L. ORTH

FRIDAY, OCTOBER 17, 2025

9:00 A.M.

PUBLIC COMMENT AND

EVIDENTIARY HEARING VOLUME III

CERTIFIED TRANSCRIPT

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INFORMATION REQUESTED BY COMMISSION

Page Line

Santa Fe, New Mexico
October 17, 2025
9:00 a.m.

HEARING OFFICER ORTH: Let's prepare to begin, please. Thank you.

Good morning, everyone. My name is Felicia Orth, the Hearing Officer appointed by the Interstate Stream Commission to conduct a Hearing in Proposed Rule 19.25.16 of the New Mexico Administrative Code relating to Regional Water Security Planning.

We are on Day 3 of the hearing. This morning we have a number of Commenters who had previously requested the 9:00 a.m. slot on Friday.

If Governor Chávez is with us, we'll begin with Governor Chávez from Sandia, and then turn to Dr. Follingstad.

Then Ms. Taylor and Mr. Lanier; and,

Then Mr. Gaume and

Mr. Wessely.

Then we'll go back to the Agency to hear from Ms. Riseley-White.

If you are in the room, please do use the sign-in sheet to indicate your desire to offer Comment today.

If you're online, please raise your virtual hand and we will make note of your name here.

I'm seeing here Pueblo of Sandia might be represented by Greg Kaufman, yes.

MR. GREG KAUFMAN: Yes.

HEARING OFFICER ORTH: Instead of Governor Chávez?

MR. GREG KAUFMAN: Correct.

HEARING OFFICER ORTH: All right. We'll begin with you.

Please do reach for your devices and silence them.

I'll ask everyone to speak slowly; we are making a verbatim transcript. If you use --

Oh yes, I'm sorry. I forgot

roll call.

I'm sorry, Mr. Kaufman; just a moment.

Ms. Salazar.

MS. SALAZAR: Yes. Good morning.

Sorry; I need to silence my phone.

Chairman Sanchez.

CHAIRMAN SANCHEZ: Here.

MS. SALAZAR: Vice Chair Timmons.

VICE CHAIR TIMMONS: Here.

MS. SALAZAR: Secretary Anderson.

SECRETARY ANDERSON: Here.

MS. SALAZAR: Commissioner Carrasco.

COMMISSIONER CARRASCO: Here.

MS. SALAZAR: Commissioner Chavez.

COMMISSIONER CHAVEZ: Present.

MS. SALAZAR: Commissioner Russell.

COMMISSIONER RUSSELL: Here.

MS. SALAZAR: And Commissioner García was just here; she stepped out.

Here she is.

And Commissioner Balok online.
COMMISSIONER BALOK: I'm here.
MS. SALAZAR: Great.
Commissioner Suina is online.
COMMISSIONER SUINA: Yes, I'm here.
MS. SALAZAR: Thank you.
HEARING OFFICER ORTH: Thank you, Ms. Salazar.
Let's see. Mr. Kaufman, if you would spell your names for the transcript.
MR. GREG KAUFMAN: Sure. My name is Greg Kaufman; G-R-E-G K-A-U-F-M-A-N.
HEARING OFFICER ORTH: Go ahead.

GREG KAUFMAN,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. GREG KAUFMAN: Thank you, Madam Hearing Officer, members of the Commission:
I'm Greg Kaufman. I'm the

Environment Director for the Pueblo of Sandia. I'm here today to present a prepared statement on behalf of Governor Felix Chávez and the Pueblo of Sandia.

The Governor is unable to be here in person today due to traditional responsibilities in his community.

The Pueblo concurs with the Comments offered by the Water Security Tribal Advisory Council in response to the Proposed Rule and Guidelines to implement the 2023 Water Security Planning Act.

The Pueblo also concurs with Taos and Laguna Pueblo's Comments relating to the State Engineer's consideration of Regional Public Welfare issues in permitting decisions.

The WSPA does not authorize the Commission to establish procedures for the State Engineer's determination of Public Welfare and Water Rights Permitting.

The Pueblo has filed its own written Comments relating to Proposed Section 19.25.16.16 of the Proposed Rule. We now offer the following additional Comments to assist with your decisionmaking:

Land and Water constitute more than mere property interests for the Pueblo of Sandia. While they are part of the physical and economic landscapes so often debated in public discourse, for the Pueblo they are the irreplaceable and sacred cultural landscape interwoven with who the Pueblo people are.

As Pueblo people they are obligated to protect their traditions, ceremonies, and natural resources. Water is sacred and central to their way of life.

Pueblo communities have lived in what is now the American Southwest since time immemorial. By the time the Spanish arrived in present day New Mexico in the mid 1500s, the Pueblos

and Tribes had been using ancient irrigation methods to water crops using ditches and canals for hundreds of years. Many of those ditches and canals are still in existence and still in use.

Despite a long history of water use, our right to water and to divine water uses remains in question. It is difficult for us to harmonize a willingness to participate in Regional Water Planning matters with ongoing concerns for procedural details that provide the appearance of fairness while concealing sometimes conflicting world views on the value and responsibility for our natural resources.

For example, in its response to the initial WSTAC Comments on the Discussion Draft Rule and Guidelines, the ISC determined that because the current Proposed Rule provides for governmental entities to have a representative seat at the table, and

because all Tribal Governments have a seat, the process is safeguarded against stacking in the composition of the Council.

This was not our underlying concern. The proposed procedural process obscures important Sovereign interests of the Pueblo of Sandia. We support a weighted voting mechanism that ensures Tribal representatives' votes carry equitable influence in matters directly impacting Tribal water resources.

We also support consensus-based decisionmaking for any water planning decisions affecting Tribal Water Rights. These commitments would help to minimize the possibility of future Regional conflicts.

The Pueblo recognizes that fostering collaboration among heterogeneous interests is a challenge. For all practical purposes, however, this Middle Rio Grande Regional Council is unwieldy in size and

comprised of several dozen voting members.

New Mexico's population is presently estimated at 2.1 million people. Nearly half of the entire State's population is within the proposed Middle Rio Grande Regional Water Planning Area. According to our GIS data, within this Planning Area, representative members of the Planning Council will include an estimated:

11 Nations, Pueblos, or Tribes;

27 municipalities;

9 counties;

The Middle Rio Grande Council of Governments;

The Middle Rio Grande Conservancy District;

9 Soil and Water Conservation Districts;

4 Regional Acequia Associations;

A couple of active Land Grants; and,

Dozens of representatives for the at-large stakeholder group. It will be exceptionally difficult to achieve consensus, let alone find a room large enough to hold all these folks.

These communities are diverse and complex, yet none, except for the 11 Nations, Pueblos, and Tribes, can speak to nonconsumptive religious, ceremonial, and cultural uses of water. These unique uses and the Sovereign status of Tribes should result in, at a minimum, consensus-based decisionmaking for any water planning decision affecting Pueblo Water Rights and uses.

We believe that the Proposed Rule and Guidelines should avoid overrepresentation and interests by the largest water users in a Planning Region at the expense of Senior Water Right holders who are smaller in number.

We understand the complexities

of the task put before you by the Act. We also understand the importance of developing Regional Water Security Plans with prioritized Projects and activities from each Planning Region. This is demonstrated by the fact that the Pueblo has in the past participated in Regional Water Planning activities.

However, unlike our previous efforts, the State has now offered a voting seat at the table. The Pueblo is concerned that its interests and concerns may not be reflected in, and may even be at odds with the majority vote determinations by a Regional Water Planning Entity, especially in a Region as large and populous as the proposed Middle Rio Grande Region.

We believe that well-supported State engagement efforts within a Government-to-Government framework for decisionmaking may have a better chance at being successful in promoting Tribal and State water planning efforts in a Regional context.

As with our earlier written Comments, the Pueblo asks for and appreciates your meaningful consideration of our concerns. We also request that the Proposed Rule and Guidelines to implement the 2023 Water Security Planning Act be referred back to ISC Staff for further consideration and revisions consistent with our Comments.

Thank you for your time this morning.

HEARING OFFICER ORTH: Thank you very much, Mr. Kaufman.

Are there Commission questions of Mr. Kaufman.

Commissioner Carrasco.

COMMISSIONER CARRASCO: Yes. Good morning. Thank you for your testimony.

MR. GREG KAUFMAN: Good morning.

EXAMINATION

BY COMMISSIONER CARRASCO:

Q. How would you envision some sort

of a weighted voting process working?

A. BY MR. GREG KAUFMAN: Well that's a good question, but I'm not sure we have any proposed solutions to that.

Our chief concern is that particularly in the Middle Rio Grande Region there are just so many Political Subdivisions with only 6 Pueblo Tribes and Nations within that Planning Region. They are going to get lost in what is likely to be a more consistent voting bloc made up by the larger urban areas and the Political Subdivisions represented thereby on the Council. This is why we want the matter to go back to ISC for further consideration.

The WSTAC is prepared to work with ISC Staff to develop a solution to that problem, but it's not something that can be summarized before this Commission at the lectern. I think it's going to take several meetings and a lot of discussion to work that out.

COMMISSIONER CARRASCO: Thank you.

HEARING OFFICER ORTH: Other Commission questions.

Commissioner Suina.

Okay. Thank you very much, Mr. Kaufman.

MR. GREG KAUFMAN: Thank you very much.

HEARING OFFICER ORTH: We turn next to Dr. Follingstad.

If you would spell your names for the transcript.

DR. GRETEL FOLLINGSTAD: Sure. Hi.

Gretel, G-R-E-T-E-L; Follingstad, F-O-L-L-I-N-G-S-T-A-D.

HEARING OFFICER ORTH: Thank you.

DR. GRETEL FOLLINGSTAD: Uh-huh.

GRETEL FOLLINGSTAD, PH.D., after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY DR. GRETEL FOLLINGSTAD: Good morning, members of the Commission and

Madam Hearing Officer. Thank you for the opportunity to provide Public Comment today.

My name is Gretel Follingstad, and I am a Senior Manager with the Climate Resilient Water Systems Program at the Environmental Defense Fund. I'm also a fifth generation New Mexican with over 17 years experience in:

Water and land use planning;

Climate risk assessments;

Drought management; and,

Applied research to inform strategic decisionmaking under uncertainty.

EDF is a global environmental NGO that focuses on providing a vital Earth for all. EDF would like to acknowledge all of the hard work that ISC Staff has put into the Proposed Rules and an updated version of Regional Water Planning in New Mexico, with attention to climate change and its impacts on water resources for New

Mexico.

EDF submitted written Comments and recommendations on September 26, and I would like to acknowledge the updates to the Proposed Rule that were incorporated and mentioned in the ISC's Staff testimony earlier this week. My verbal Comments today will focus on areas that we felt were most important that the economics consider:

To start we would like to voice our support of the testimonies from Tribes, Pueblos, and Nations shared on Wednesday.

We would also like to support the Testimony from the NGO community from Western Resource Advocates, as well as New Mexico Wild in your consideration of long-term impacts, as well as the benefits of the PPPs in the documentation provided by the Planning Councils.

Next we would like you to respectfully consider the following

suggestions:

In the Proposed Rule Section 6, 15, and 16 regarding Public Welfare and balancing water needs for future generations, we appreciate the Testimony yesterday from Mr. Chakeres. It was helpful for clarity on this portion of the WSPA and the Proposed Rule.

Given the dialogue yesterday we believe there is benefit to the Regions and the planning process that ISC provide some technical assistance for this requirement of WSPA by way of an optional and transparent framework that guides Regions in a procedure for the development of Regional Public Welfare Values, and the current and future water uses and needs in the Region for future generations of New Mexicans.

We believe that by providing this type of framework for this procedure it could offer some clarity on the baseline definition of New

Mexico's statewide Public Welfare Values, including the history that Mr. Chakeres shared yesterday, and the background principles for delineating Regional Public Welfare Values.

Currently the Rule does not outline a clear procedure for Councils to meet these requirements, which was noted by Mr. Chakeres, and was due to the variation across Regions and their capacities, and also how this may be considered.

However, we recommend that ISC provide support through an optional and transparent framework for this process during the initial planning period as an element of the ISC technical support to meet WSPA requirements.

The guidance for Regions to incorporate community, cultural, and place-based values of water and land use into public and Regional welfare values could provide a benefit to the whole planning process.

ISC Staff also mentioned the forthcoming Tools and Templates during this Hearing process, and perhaps this kind of optional framework for a facilitated process on Public Welfare Values could be included in those deliverables.

Next, in Section 10 of the Proposed Rule we suggest adding more clarity about the funding mechanisms and fiscal agents within their Councils. The Rule could provide more clarity about fiscal agents for the Regional Water Planning activities, including research and data compilation within the Councils' outreach, and education for their Council process and Regional Planning process and meeting expenses in addition to the PPP implementation.

In addition we felt clarity was needed on equity and the allocation of funds among Regions and the ISC's process for supporting funding acquisition for the PPPs that are identified in Regional Plans and

required in the WSPA.

We also recommend that the Rule provide guidance to Councils for entering into Memoranda of Understanding between Regional entities if desired and needed to ensure that Councils are well-structured to implement their Plan and their PPPs. This could also be offered in the technical assistance ISC provides in the Tools and Templates mentioned by ISC Staff.

We believe these Regions will help Councils in both the process of developing their plans and executing the PPP lists for plan implementation.

Next, WSPA places great emphasis on ensuring that Regional Planning is founded in the best available science, data, and models. We suggest updating Sections 10 and 11 with language that specifies Regional Plan Development and Plan Update time frames to better coordinate with the advancements in Regional and statewide

water science data. In particular, the advancements in:

The aquifer characterization summaries;

Indian Water Rights Settlements; and,

Other updated Water Rights Adjudication information.

These data could inform the order of the first 3 and the next 3 Regions in the 3-by-3 process that ISC Staff mentioned to initiate the planning process, which would then be based on the best available data and these other key elements that are important for Plan Development.

ISC's technical support responsibilities could also include communications of data developments and updates, especially those pertinent to specific Regions from State agencies, including those that are part of the Water Data Initiative to support Regions to best meet this WSPA requirement. Perhaps this, too, could

be part of the Tools and Templates that are forthcoming, as mentioned by ISC Staff.

In Section 14 we suggest updating language to initiate a review of Regional Plans and a review of the PPP list if new and relevant data become available, particularly if that data was identified as a data gap or necessary for plan implementation.

Lastly there has been quite a lot of conversation this week about Subregions. We would like to acknowledge that discussion about Subregions and offer, respectfully, additional criteria for Subregions to include New Mexico's Groundwater basins as hydrologically connected areas.

Groundwater is critical to New Mexico's water supply, providing over half of the State's total water portfolio, a critically essential water resource which provides drinking water to 81% of our public water

systems and over 170,000 private wells, together providing 78% of the State's population with drinking water.

According to the Water Use By Categories Report, additionally Groundwater supplies 50% of the water used in irrigated agriculture. Given this importance, proactive and locally based Groundwater management is an important component of New Mexico meeting the objectives of the WSPA.

We suggest updating the Subregion description to include Groundwater basins as geographically appropriate within the 9 Regions. This would allow for areas of a Region that are dependent on Groundwater to establish a Subregion and provide specific planning priorities related to aquifer conditions, longevity, and efficient uses of this critical water resource.

Additionally Groundwater basins as Subregions provides a foundation for establishing a proactive

Groundwater management entity within these local areas.

Like many western states, New Mexico is facing escalating Groundwater concerns due to diminishing Groundwater levels, and at crisis levels in some areas. The need for proactive, locally driven Groundwater management couldn't be more important at this time.

Groundwater Basin Subregions can help establish localized Groundwater concerns and local place-based Groundwater management options within the Regional Plans, with support from the State for technical, administrative, and financial resources.

There are many tools and approaches available for localized and proactive Groundwater management that could be incorporated into the PPPs, enabling local leaders the authority to manage resources appropriately for local land uses, economies, and water

availability challenges.

We have successful examples here in New Mexico, including the Pecos Valley Artesian Conservation District in Chávez and Eddy Counties.

Commissioner Balok manages the PVACD, which is a Political Subdivision that works to conserve the waters of the Pecos Valley by offering low-interest water conservation loans, plugging abandoned wells, and ensuring that wells with Water Rights are metered.

PVACD has allowed for local-level governance of Groundwater and a funding mechanism to support the work to manage water conservation in the Pecos Valley. It is an example of how Groundwater Districts could be formed under existing New Mexico law.

In addition, the Ogallala Land & Water Conservancy in Curry County seeks to conserve the agricultural land and Groundwater of the Ogallala Aquifer by developing a voluntary,

incentive-based Groundwater conservation model that addresses immediate threats, while planning for long-term sustainability in the area.

Examples outside of New Mexico that have addressed decades of water depletion to balance local water supplies include:

The Groundwater Management Districts in Western Kansas, also part of the Ogallala Aquifer, to balance their water use with recharge rates, as well as the California local Groundwater sustainability agencies, or GSAs, which proactively recharge aquifers during wet periods and incentivize reductions in irrigation while providing community benefits, such as weed and dust control, as well as Shortage Sharing Agreements among users.

Groundwater Basin Subregions would allow for the Regional Plans to articulate specific Groundwater concerns and include sustainable

Groundwater management practices, modeling, and mapping into the PPP types, and potentially establish local authorities that could help implement these priorities and plans. Thank you.

HEARING OFFICER ORTH: Thank you, Dr. Follingstad.

Are there Commission questions?

Commissioner Chavez.

EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. Good morning, Ms. Follingstad. Thank you for your testimony.

Quick question:

Have all the Groundwater basins been mapped in New Mexico?

A. BY DR. GRETEL FOLLINGSTAD: No, they have not.

COMMISSIONER CHAVEZ: Thank you.

HEARING OFFICER ORTH: Other questions.

Commissioner Russell.

EXAMINATION

BY COMMISSIONER RUSSELL:

Q. Hi. Thank you for your testimony. I think you have many interesting proposals.

One of the issues that's emerged in the Subregions is the question of the committees that might be developing information about them and their relationship to the Councils themselves. I wonder if you have any thoughts on that.

Also it seems that the criteria and some of the other policies or other Rules relate to the Councils, but not necessarily to the subgroups, and I wonder if you had any observations about that.

A. BY DR. GRETEL FOLLINGSTAD: I found that part of the conversation earlier this week quite intriguing.

As far as I understood it from the testimonies earlier this week, the Subregions don't have the same frameworks and Rules, perhaps, as the

membership of a full Region.

Given that, I wonder about the voting criteria, too, of the membership and how that may impact a Subregion, and that perhaps revisiting how Subregions are formed, with similar Rules, perhaps, and that there is some level of process provided for a full Region Council to adopt or have a relationship with these Subregions, that feels equitable to some degree.

From the perspective of Groundwater we do have very large Regions. That keeps coming up over and over.

I also understand the reason why, you know, they reduced the number of Regions and how they came to that mapping process.

I think the Subregions offer some level of resolution to some of the issues and challenges that may be faced because of these large Regions. I think revisiting how Subregions are formed and their role in the full

Region would be important, especially in Regions that may have certain areas that are fully Groundwater-dependent, and other areas that are, perhaps, dependent on both Groundwater and Surface Water, or even areas that are just Surface Water and just Groundwater.

COMMISSIONER RUSSELL: Thank you.

HEARING OFFICER ORTH: Next we will move to Commissioner García.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you, Ms. Follingstad, for your Comments today. I appreciate the specificity of your recommendations.

I was going to ask you to elaborate on your recommendations for the use of data:

How would you envision some kind of equitable system for availability of data across different Regions? Because there is different capacities in different parts of the

State for entities to access data, and I think that's one of the...

You know, coming from an area of the State that's more rural, with smaller municipalities and not as much access to institutions like universities, what would be a good example of a robust set of data that all Regions would have access to?

A. BY DR. GRETEL FOLLINGSTAD: I think that there could be some revisions to how data is shared across the State, especially from the municipal scale in terms of water use and water availability. I think that's one way that could be still, you know, proprietary, but offering some level of water budgeting framework for the Regions to use in their own planning process that could be closed to them.

I also think that there are remote data offerings that could be made available in the Tools and Templates or the Dashboards that I

think are being conceptualized right now for those Tools and Templates that could also offer some baseline data around, you know, climatology, water availability, and some of the federal-level data, which, you know, right now some of it is compromised, but not all of it is, but there is USGS data and NRCS data for these areas.

Those data sources in intuitive and easy platforms for more rural areas to access that data could be offered as the technical assistance that ISC provides just to create that baseline.

Then in addition to that, OpenET data perhaps.

You know, right now some of that is proprietary, but perhaps there are ways that the State can work towards providing OpenET data, which is, sorry, an evapotranspiration data platform that allows areas to really understand what's happening in terms of consumptive uses of water to help

with that water balance equation as they are working towards, you know, future needs and how to budget appropriately for the reduction in water resources that we're facing as we tick forward with climate change.

Q. As a follow-up question, to what extent are you aware of how much our aquifers are mapped in different Regions around the state? Is there any reasonably...

If a Region wanted to start with that as their base of water for future needs, and they wanted to know how much is there, how much are we using, how much is there, what does a Region have that is accessible to them now? Is it pretty consistent across the State, or is it patchy?

A. BY DR. GRETEL FOLLINGSTAD: It's definitely patchy, but the program that Stacy is leading at the Bureau couldn't be more important for just that reason.

Stacy has a list of priority

basins that she, you know, will be mapping. I would suggest that the planning process coincide with her prioritization of those areas such that it's coordinated as they're working forward.

Other options that are, again, at different resolutions in terms of Groundwater mapping do include the USGS data and NASA's GRACE data. The resolution of those is very, very different from what Stacy is doing, so the characterization and the summaries that Stacy is providing will provide much more detail.

But, again, those larger datasets that are federally produced do offer at least a very, very baseline understanding.

The other piece there that is possible is if, you know, any Region would like to be a part of the Monitoring Well Network, that, too, is, you know, starting to put together baseline data around Groundwater

levels. If a specific Region would like to understand more, they can start monitoring, you know, or have a monitoring well and start understanding their aquifer levels and how those change.

Q. Great.

We could talk all day about water data, so I really appreciate you indulging my question.

You mentioned climatology. What are good sources of data on climatology?

You know, one of the things we heard yesterday was trying to plan around flooding events that seem to be more frequent now. How do we...

I mean is that a dataset that's available already, or does each Region have to like sponsor a study to understand the climatology in their Region.

Also, what is the right scale to do that? Is it each Region, or does the State have its own?

I know there is the Leap Ahead data, too, but what would be the best way for a Region to wrap their hands around that?

A. BY DR. GRETEL FOLLINGSTAD: The first step there would be looking...

Again, right now I haven't been visiting federal datasets lately, but FEMA's Floodplain Map data, not all of that is up to date, but they generally have an archive of, you know, floodplain mapping to allow for local communities to understand where their floodplains are, but some of these are very dated.

There is also datasets with, again, the NRCS in terms of floodplains, and the USGS actually, too, as well as NOAA, is starting to put together a High Flow/Low Flow dataset that's offering, you know, the sort of extremes and mapping those extremes.

That High Flow/Low Flow dataset, though, for New Mexico, it's

a little more challenging because we have so many intermittent streams that, you know, will flood.

For example, I believe Red River, you know, cast almost 1,000 CFS into the Rio Grande yesterday. These would be captured by stream gauges, so these flood events, you can start to archive them.

Q. Just one more question:

You mentioned in Section 10 the concept of funding mechanisms and fiscal agents and equity. Could you elaborate on that a little bit, please?

A. BY DR. GRETEL FOLLINGSTAD: I think we have a large variety, as everyone here knows, of capacities across New Mexico. Really understanding what it means to fund each one of these Regions for both the Regional Planning process, to make sure that's equitable, and understanding what "equitable" means, because we have different capacities

in different communities.

You already mentioned that some of our rural areas don't necessarily have university partners nearby that could help with data or could help with analysis, or could help with a variety of other things, while other Regions have multiple universities and those types of partners available to them.

In that case there would be some level of understanding of certain Regions that may have more need than other Regions, and a process for establishing that so that our lower capacity Regions still have the same opportunity to get good data and good planning with fewer partners.

Q. Just one related question to that:

What do you think the role of the ISC is in providing technical assistance and building capacity?

A. BY DR. GRETEL FOLLINGSTAD: I think there is an opportunity for the

ISC to provide the baseline data that we were just talking about to Regions.

I also think there is an opportunity for them to provide assistance in terms of optional frameworks or optional processes that Regions could choose to use in their planning process.

It was brought up earlier in the week around if you're starting from scratch and you really don't know, you know, what to do, or it's been, you know, a number of years since your Regional Council or group has met, having some level of framework to start from would be helpful for Regions, and I think ISC has the opportunity to provide that.

It is sort of a hybrid between, you know, the first round of Regional Water Plans and the second round, which, you know, was also discussed this week in terms of bottom-up and top-down.

I think that providing

equitable access to the best available and accessible data that we have, or that the ISC has is a way to help facilitate especially the Rule in lower capacities and lower populated areas in the State that are working on plans.

Q. One more question, and it is my last question:

On Public Welfare you mentioned a procedure for helping to articulate Public Welfare Values, and we had some discussion on that subject yesterday during Mr. Chakeres' presentation.

There are 2 sections in the Statute that mentions the procedure. Where would you see this in the Rule?

When I read the Rule, Public Welfare doesn't pop out, it's kind of just mentioned as if it's just one of many considerations, when the Statute seems to elevate it to something almost on the same level as PPPs, or actually more and not the same.

What would be a good way to

integrate that into the current Rule, or what kind of amendments might be appropriate to make this possible, even if it's optional?

I think you used the word "optional," which is understandable, but I see a variety of values just from hearing Public Comment, so I know it's not easy.

If a Region wanted that, what would it look like and where would it be in the Rule do you think?

A. BY DR. GRETEL FOLLINGSTAD: Me personally, you know, with experience at a lot of different scales of planning and different types of planning, the Public Welfare piece and really understanding those values, it's sot of a visioning piece of planning.

I have seen really great successes with really contentious groups when they start with a visioning component of planning, even when they are contentious. That could be framed around, "What is Public Welfare for

our Region," such that you end up with very robust implementable plans because they work through some of that process right in the beginning.

What we have suggested is that framework and that technical assistance happen in the initial planning period such that Regions can really work together in that first phase while they are understanding how they're governed as a Council, but also what is their vision for this plan? What are they, you know, aiming for? What is the vision and the goals? How are they going to get there then comes into this PPP process.

That's how I envision it. I have helped create facilitated processes for these types of things, and they aren't easy conversations, yet when you start with a visioning framework, usually you end up with a space that folks can work together towards implementable plans.

COMMISSIONER GARCÍA: Okay. Great. That's really helpful. Thank you very much.

HEARING OFFICER ORTH: Thank you.

Other Commissioner questions in the room.

No.

Other Commissioner questions from online?

No.

Thank you very much, Dr. Follingstad.

Are there other brief Comments in the room?

Sir, come on up.

Are you Mr. Miller?

MR. WILLIAM MILLER: Yes, ma'am.

HEARING OFFICER ORTH: Okay. If you would spell your first and last name for the transcript, please.

MR. WILLIAM MILLER: Yes, my name is William Miller; W-I-L-L-I-A-M M-I-L-L-E-R.

HEARING OFFICER ORTH: Thank you.

Just keep it slow, if you would, or speak slowly.

WILLIAM MILLER,
after having been first called, was examined and testified as follows

PUBLIC COMMENT

BY MR. WILLIAM MILLER: Thank you, Madam Chair, Commissioners:

My affiliation is I am a resident of the State and an interested professional. I am a Registered Professional Engineer in New Mexico practicing in the area of Water Resource Engineering, and I have 48 years' experience in this field, including 20 years on the Staff of the Stream Commission. My brief statement is as follows:

I have listened to much of the testimony and Comments given before the Hearing Officer over the last 2 days. It is gratifying to me to see so many water users who have made the

commitment to participate in the development of these Rules.

I do not have any specific changes to the language of the Proposed Rule to suggest, but I do ask the Commission and the Hearing Officer to recognize the critical nature of the water supply situation we find ourselves in.

The Commission is aware of the impacts of climate-induced drought that we are experiencing and will experience in the future. Some of the current symptoms include record or near-record low stream flow, including consecutive years of shortage to the firm yield of the San Juan-Chama Project.

We're seeing declining water levels in our underground water basins, and record low storage levels in our reservoirs from Lake Powell to Elephant Butte.

The experts' best predictions of future climate conditions include a

significant increase in temperature, an increase in vegetation evapotranspiration, and an increased frequency of extreme hydrologic events. This is alarming.

We are experiencing the effects of this warming trend now, so this is not some sort of abstract future condition, and we are not ready for this.

This Rulemaking process provides the Commission with an opportunity to influence the planning process in a manner that will place us all on a more secure footing.

We must recognize the emergency nature of our situation. We can do this by allowing the Commission and the Regional Planning Councils to take immediate action, if necessary, to preserve public health, safety, and welfare.

Madam Chair, that's the conclusion of my Comments.

HEARING OFFICER ORTH: Thank you.

Are there Commission questions of Mr. Miller?

Commissioner García.

COMMISSIONER GARCÍA: Thank you, Mr. Miller, for coming and taking time to be here.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Can you give us some recent examples of some of the record lows, and also something to give us an idea of the emergency that we're in, including examples of hydrologic events that you think are critical and how that affects our water infrastructure and our water supplies?

A. BY MR. WILLIAM MILLER: That's kind of a long question, but we have a response to the symptoms of drought.

We have reviewed the stream flow record of what I would call index stream gauges. These might be gauges like on the Red River or Santa Cruz River, or Jemez River that are

substantially -- the records are replete with use of upstream water users.

We have seen in the last 20 years that there has been a steady decline in the runoff on the Red River, Santa Cruz, and Jemez River, which has resulted in, I would say, chronic shortages to the water users, and principally the Acequias and the Pueblos in Northern New Mexico.

This, combined with a lack of infrastructure to address the low flows, it's difficult to divert water from the river with aging infrastructure, and this affects the communities and the local economy.

I think that was the answer to the first part of your question. Could you repeat the remainder of your question?

Q. Any other hydrologic events.

You talked about drought, which is a really good example. Any thoughts about flooding or hydrologic

events that are causing flooding in some of these same basins that have drought part of the year, and then they are flooded at a different part of the year for example?

A. BY MR. WILLIAM MILLER: Yes.

Well it's not solely drought. Some of the extreme hydrologic events we've seen include cloudburst rainfalls that deposits sediment in stream flows that makes it difficult to deliver water downstream and reduce channel capacity.

When we do have floods it increases the water levels and damages stream-side and safety infrastructure.

COMMISSIONER GARCÍA: Thank you. Those are good examples. I appreciate that. Thank you.

HEARING OFFICER ORTH: Thank you.

Other Commission questions in the room.

No.

Any Commissioner questions from online?

Thank you very much, Mr. Miller.

MR. WILLIAM MILLER: Thank you for the opportunity.

HEARING OFFICER ORTH: I believe we have Director Velasquez online to offer Comment, Toby Velasquez.

MR. TOBY VELASQUEZ: Good morning.

HEARING OFFICER ORTH: Hello.

If you would, please --

MR. TOBY VELASQUEZ: I am Toby Velasquez of the Energy Minerals and Natural Resources Department. My name is spelled T-O-B-Y V-E-L-A-S-Q-U-E-Z.

HEARING OFFICER ORTH: Thank you. Go ahead.

TOBY VELASQUEZ,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. TOBY VELASQUEZ: Your New Mexico State Park System is in its

92nd year, and is part of the tapestry of our Land of Enchantment. Your State Park Systems is comprised of 35 state parks that exist in 23 of 33 counties and supports over 5 million visitors each year.

HEARING OFFICER ORTH: Director, I'm sorry. Would you slow down, please?

MR. TOBY VELASQUEZ: Yes.

Your State Park System relies on not only its own Water Rights, but other Water Rights to fill our rivers and reservoirs at state parks, in order to provide essential recreation opportunities for the people of New Mexico.

The State Parks Division has a unique understanding of local, regional, and statewide interests and expectations for water-based recreation.

As Director of the New Mexico State Parks Division I respectfully request that the Commission add the language provided in Written Comment

and make the New Mexico State Parks a voting Representative for Planning Regions that have one or more state parks within them. This is provided under 19.25.16.12A(1). State parks, through the Energy, Minerals, and Natural Resources Department's General Counsel provided Written Comment expressing this consideration on September 26 in advance of the reported deadline.

Thank you for this opportunity to Comment and have a great day.

HEARING OFFICER ORTH: Thank you, Director.

Let me see if there are any Commission questions of you.

No. Thank you very much.

Do I understand there is someone whose first name is John online to offer Comment?

MR. JOHN KADLECEK: Yes.

HEARING OFFICER ORTH: Hello.

Would you state and spell

your first and last name, please.

MR. JOHN KADLECEK: Yes. John Kadlecek; J-O-H-N K-A-D-L-E-C-E-K.

HEARING OFFICER ORTH: Thank you. Go ahead.

MR. JOHN KADLECEK: Do you need my address?

HEARING OFFICER ORTH: No, I don't. Thank you.

If you have an affiliation, we would like to hear it.

MR. JOHN KADLECEK: Yeah, I'm a Supervisor with the Santa Fe-Pojoaque Soil and Water Conservation District.

I also serve on the Water Policy Advisory Committee to the Santa Fe Board of County Commissioners.

I'm also the President of the Rio en Medio Mutual Domestic, and the Mayordomo of the Rio en Medio Ditch Association.

JOHN KADLECEK,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. JOHN KADLECEK: I am here today mostly in my capacity as President of the Mutual Domestic because I am concerned about the language of the At-Large Representative for Mutual Domestics in its particular vagueness.

I very much liked hearing what Mr. Kaufman had to say about how this room may not even hold all these Representatives, and if there were to be a Representative from each Mutual Domestic in that area, it's getting to be an unwieldy number.

It does mention a Regional Community Association of which we are not part of and none exists. I know that there are conversations about creating them, but many Mutual Domestics are independent and autonomous in nature and won't necessarily want to be involved in something like that.

I wish that I had a solution to offer for my concern, but the only

thing I can think of has to do with the conversation about Subregions, which also I think is a very good idea, including having voting rights and being based on Groundwater areas.

That's the general Comment I had about Mutual Domestics.

The other one, which, to me, is kind of the elephant in the room, and that's the discrepancy between actual paper Water Rights and the actual amount of water that we have in this State.

Again, I don't have any solution, but I think maybe there's a way that will come out in the PPPs. I see that part of this is about protecting the Water Rights, but know that there is less water than there is Water Rights, and that's an important issue. That's a very important issue to me. That reconciliation is going to come in a very uncomfortable way in the future, and that's something that needs to be kept in mind before that

day comes.

The other thing I wondered is there is no language in here about the Open Meetings Act, and I wondered if that would be a part or required of the different Councils.

Thank you very much for putting all this together and providing the opportunity to Comment.

HEARING OFFICER ORTH: Thank you, Mr. Kadlecek.

Let me see if there are Commission questions of you.

Commissioner García.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Mr. Kadlecek; is that the correct pronunciation?

A. It is, thank you.

Q. Okay. Thank you.

Thank you for your Comment today. I would like to ask you if you could elaborate on your Comment about paper Water Rights versus wet water.

Are you located in the Pojoaque Basin?

A. BY MR. JOHN KADLECEK: I am, yeah. I'm just north of Santa Fe, outside of Tesuque.

Q. What do you mean by "paper Water Rights versus wet water," and can you give us an example of what that means in your Region and your stream basin?

In other words do you have any sense of what the discrepancy might be?

A. BY MR. JOHN KADLECEK: This is something that I wish I was more informed on than I am. I'm part of conversations with people who are more informed than I am, but it has to do with the fact that development in Santa Fe has to show that they have enough Water Rights to provide to the residents that they are building for, but they might be coming from Socorro. There is no reality in moving that water because it's an abstract concept.

That's the best example that I can think of right now, as well as knowing that from the beginning the Colorado Compact, the geologists announced how many Water Rights were possible, and the politicians said, "Well we need this many," and they are the ones that the Colorado Compact was based on.

Again, I am not an expert in that, but it's my understanding that the discrepancy was there from the very beginning.

Q. Okay. Just a clarification, Mr. Kadlecek:

Are you saying that Water Rights in the Middle Rio Grande get transferred to Santa Fe, and then that water is pumped out of a Santa Fe Aquifer?

A. BY MR. JOHN KADLECEK: No, I'm not, I'm saying it's all done on paper.

Q. Okay. Let me ask about the Acequia:

Do you have a sense of how many Water Rights are on your Acequia on paper, versus how much actual wet water you get from the stream system?

A. BY MR. JOHN KADLECEK: Most years we get no water in our Acequias.

Q. So there is a certain amount of paper water that your Parcientes own.

A. BY MR. JOHN KADLECEK: Right.

Q. But there isn't wet water to meet that hypothetical water or theoretical water that's on paper.

A. BY MR. JOHN KADLECEK: Right.

The Rio en Medio is the river that runs through the Santa Fe Ski Basin, and so we are completely -- well not "completely," but we're heavily reliant on snow melt.

There are a number of springs, but they are also reliant on the snow melt. Most summers, especially if there is little to no snow melt, the river isn't high enough to get into the Acequias.

I think that we have 3

different Acequias, and each one probably has around 10-acre-feet that should be going into it.

Also for the first time this year in May we were told by the OSE -- we have one Acequia that's metered. We were told by the OSE in May that we had already used our total allocation, and it's the first time since 1863 that we were ever going to have to shut down the Acequia for that reason, and especially that early.

What we were told was that the Pueblos downstream were monitoring that gauge, and they were the ones who complained that we had already used the amount of water that we were allocated.

Now I'm not questioning their right to do that at all, I'm mostly pointing out the changing conditions that we're facing.

Q. I understand.

What you're saying is you're trying to point out the scarcity of

water.
A. BY MR. JOHN KADLECEK: Right, yeah.
Q. One more question, Mr. Kadlecek:
On those paper Water Rights is there a trend of those paper Water Rights being transferred to other entities?
A. BY MR. JOHN KADLECEK: Again, I'm not an expert in that, but I think my concern is mostly with development.
I've was also told, when I had a meeting with the OSE and was cited an example of someone who had some industrial use...
I think this isn't relevant; never mind.
Q. Thank you. No problem.
A. BY MR. JOHN KADLECEK: Yeah, I mean, yeah.
Q. One more question:
Do you think that it would be helpful in the Regional Water Planning process to understand this discrepancy between paper water and wet water?

A. BY MR. JOHN KADLECEK: Very much so. Very much so.

Q. And, Mr. Kadlecek, do you think that data is readily available?

A. BY MR. JOHN KADLECEK: Maybe not "readily," but available.

Some of it, you know, depends on the previous question about how well have the aquifers been mapped? You know, I see the numbers that are supposed to be coming from the Aamodt Settlement from the pipeline, and it's kind of hard to believe there will actually be that much water because it's based on snowfall.

So I don't think "readily," but I do think available with some digging, and I think it's an important thing to look into.

COMMISSIONER GARCÍA: Thank you for your time and indulging my questions, Mr. Kadlecek.

MR. JOHN KADLECEK: Thank you for asking them.

HEARING OFFICER ORTH: Okay.

Other Commission questions in the room.

No.

Online Commission questions.

All right. Thank you.

I believe we've come to the end of the brief Commenters this morning.

We'll turn now to Ms. Taylor, and I believe our supporters here are prepared to throw up your PowerPoint.

MS. ELIZABETH NEWLIN TAYLOR: Good morning, Madam Hearing Examiner and Commissioners:

Senator Lanier is going to go first, so could you change that, please? Sorry.

HEARING OFFICER ORTH: Thank you.

Senator, if you would spell your names, please, for the transcript.

SENATOR STEVE LANIER: Yes, Madam Hearing Officer and Chairman and Commission. Thank you very much for allowing us to speak today.

My name is Steve Lanier;
S-T-E-V-E L-A-N-I-E-R.

SENATOR STEVE LANIER,
after having been first called,
was examined and testified as follows:

PUBLIC COMMENT

BY SENATOR STEVE LANIER: Being a retired school teacher I have to have a PowerPoint, so that's why you get this.

Just a little bit about myself:

I am a retired school teacher, and I got involved in water early on, so it's like one of my passions that I've had for years and years.

I became a County Commissioner, and then a little bit later on I became a State Senator, so that shows you that I may not be all that bright.

I do want to keep this brief today because I know you've been here

all week, as I have, and we're going to try to move through this pretty quickly.

Just as an overview -- next slide, please, Slide 2.

Do I do that one. Do that one.

I sat as the Chairman of the San Juan Water Commission, and I also take great pride in that. Our Water Commission is very, very active in our area. I wouldn't say that's a prestigious position necessarily, but it is a very, very important position because of things like this.

I do want to thank you for allowing us to speak, and taking all of these days and opening up and listening to what people have to say. So many Commissions that we present before, a lot of times they do not open up and listen to everybody, or take notes, or ask te great questions that I have seen you ask.

I also sit as a Trustee for

the Colorado Water Users Association, and that's a very important one. I know I see a lot of familiar faces that we have there.

I do apologize, because I'm a retired coach and things like that, so sometimes I'll have that little coaching voice here. If I get a little bit loud, it's not because I'm upset or anything like that.

I do want to thank Staff because I know that you guys have worked very hard on this Rule, and we do appreciate that.

We do have a few suggestions, so Slide 3, yes. I'm on 3 -- 4.

The San Juan Water Commission does have a Mission Statement. All of that is in front of you so I'm not going to read back to you what you can read there, but the Mission Statement is very important:

"Protect the use of future existing Water Rights and water resources of its member

entities."

We do have several entities that we represent, but we were established all the way back in 1989. The 40-year Regional Supply Plan, that's our basis. That's what we work off of.

We organized and led Regional Planning in the early 2000s, and assist member entities in water planning and resources, but that has had to evolve since the Animas-La Plata Project has been completed. We have evolved such that we're helping our entities even more than usual.

This percent here, if you look there:

"60% of New Mexico's Surface Water runs through San Juan County."

That number is kind of disputed. We've heard numbers all the way from 76% down to 50%, so I like to meet in the middle, 75%. That means three-quarters of the water runs

through San Juan County.

If you haven't been up there, please come up and we'll show you how beautiful it is, especially right now with all of the rain that we've had.

We do participate in the San Juan River Basin Recovery Implementation Project, or the RIP, and are a funding member of the Animas-La Plata Project, OM&R Association, which I sit on that Board also.

All right. We do have some suggested amendments, and a lot of these you have heard before.

This is 19.25.16.16A through C:

We are very worried that the Rule may not be quite right, and that's why we're taking the time to do this now. If this Rule is not done right, then we want to make sure that the statutory authority in promulgating the Rule is preserved.

In other words we want to make

sure that we are not taking away power from the State Engineer, and that we're doing things that doesn't open us up to lawsuits later, or arguments for later.

With that we are asking to delete the section concerning Public Welfare as that is a very broad term, and it's going to be very difficult for anyone to define that. I think it opens us up for...

You heard Nat talk yesterday, from State Engineer's Office, who said that some of that terminology and definitions need to be changed. We would like you to look at that.

We do believe it is beyond the statutory authority granted by the WSPA. It could restrict Water Right Owners' ability to use their Water Rights, and I know you've heard this over the last three days more than once.

Public Welfare should be defined by the Legislature.

The Water Code does not prioritize one use of water over another, and that becomes a very large legal issue.

Slide 6.

Again, as you've heard this week, we need to expand the Representative Members.

Councils should be expanded to include other Political Subdivisions and Community Ditch Associations in addition to the 7 entities proposed.

This one would include the San Juan Water Commission, and we believe that we should have a seat at the table. We are very active.

Again we go back to 75% of the water runs through our County.

Water Code does not prioritize the use of water over one another. That is very, very important to us and we want to keep those in line.

Are we on page 6?

Councils should be expanded

to include -- I already said that; sorry. I got a little bit lost.

Community Ditches in San Juan County serve as many residents as a small town.

We have the small town of Bloomfield, New Mexico, which has about 7400 people. That's about the same number that we're talking about of our small entities that we represent.

Page 7, or I don't know what slide.

This one falls under 19.25.16.12A(1). We would like to expand the Representative Members from the proposed language.

In context, before you is...

Let me make sure I get this right:

We would like to insert (g):

"One representative member of each Regional Community Ditch Association or Rural Water Users Association in

the Planning Region, or if no Regional Community Ditch Association or Rural Water Users Association exists, one representative from Region appointed by the New Mexico Rural Water Users Association."

That would be an insert.

Then you see next we would mark out or take (g) out, and (h) would be inserted:

"One representative member from an active Land Grant appointed by the Land Grant Council in a Planning Region."

That takes you to (i). We would have to insert (i), and that would be an addition at the end:

"One representative from each additional Political Subdivision located in whole or in part within the Planning Region not falling

within the previous membership categories."

We think it is very important to bring in those people. The more people that you have at the table, the more ideas and the better chance we have of making this work.

On Page 8, "Improve Mapping," and I know you've heard this one again this week.

This map here -- I hope you all have your bifocals on because it's very, very small print, but we can give you a bigger printout if you need it.

This map is just like an overlay of the map that you have provided that shows the townships, the County boundaries, and it's just a little more detailed so that we can identify exactly where these Regions would be.

As you can tell from the map, some of those Regions are very, very large. We would like to see that

looked at and see if we can't overlay a map just to define it a little better.

Slide 9, or page 9. "Severability Clause."

We would like to add a Severability Clause, or one should be added to the Rule to ensure that the Rule will continue in effect if a court determines that one section is invalid or cannot be enforced. The proposed language would be as follows:

"19.25.16.17: If any section, paragraph, clause, or provision in 19.25.16 NMAC shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of the Regional Water Security Plan."

I think that's pretty self-

explanatory there.

You know, we just want to make sure that we are protected not only as ISC, but as San Juan Water Commission. We believe that the more we can do in this Rule, the less we will have to do, say, in a court ruling.

I would stand for any questions, but it might be helpful if Liz goes next, or if Liz goes first, and then we will take both questions at the same time, whatever you would like.

HEARING OFFICER ORTH: What's your pleasure, Ms. Taylor?

MS. ELIZABETH NEWLIN TAYLOR: Yes, ma'am, let's do that.

HEARING OFFICER ORTH: Questions will be taken after you're done.

MS. ELIZABETH NEWLIN TAYLOR: Yes, ma'am.

HEARING OFFICER ORTH: Be sure to spell your first and last name and speak slowly. Thank you.

MS. ELIZABETH NEWLIN TAYLOR:
Good morning, everyone. My name is Liz Newlin Taylor. That's Liz, L-I-Z; Newlin, N-E-W-L-I-N; Taylor, T-A-Y-L-O-R.

ELIZABETH NEWLIN TAYLOR, ESQ.,
after having been first called,
was examined and testified as follows:

PUBLIC COMMENT

BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.:
I appreciate the help on the AV here because I'm not allowed to touch the keyboard; it says that right here (indicating).

Steve did a good job of explaining a lot of what the Water Commission's concerns are.

Can you go to the next slide, please.

I'm speaking not as a representative today of the San Juan Water Commission, but rather as a Water Law Attorney.

Next slide, please.

I have more than 30 years of experience, and I will note that I started when I was 12.

I get a lot of Permits from the State Engineer's Office. I've represented public and private clients.

I realize now I failed to pass this out to you guys.

Because there is a lot of print there, I'm just going to summarize though.

I've also been involved in Rulemakings. I've testified before the Legislature, which is always a fun task.

So if you could go to the next slide, please.

My Comments really are threefold:

I want to talk about the Public Welfare directive to the State Engineer that you have heard about;

About Council membership;

and,

About drafting suggestions.

If you're following along, go to the third page of the handout, please.

This really is a Public Welfare issue. Senator Lanier mentioned it and Mr. Kaufman mentioned it earlier.

The part of the Rule from the ISC that directs the State Engineer to consider Public Welfare and to make a written decision about it is beyond the authority of the Interstate Stream Commission.

I've been thinking about this while listening to all the testimony over the last couple of days. What it boils down to is if I'm a Water Rights owner, or I represent a Water Rights owner and I want to know how I Transfer a Water Right, because the Transfer of a Water Right is an inherent part of the ownership of the Real Property that is water. If I can't move it,

well then what good is it; right? I want to use it in place, but I also need the ability to sell it and to move it, and that's part of ownership.

If I am a Water Rights owner and I'm looking to know what to do to Transfer a Water Right, I'm going to look at Article 72. I'm going to look at the Water Code, you know; the venerable Water Code from 1907 forward. I'm going to look at the Rules and regulations of the State Engineer.

I participated in the development of those Rules and regulations. They are very helpful in explaining in more detail what the statutory criteria are and all the procedures you have to follow in order to successfully Transfer a Water Right.

I can tell you from bitter personal experience that if you mess up on the procedures, you're out; right? If you fail to pay the filing

fee or you don't provide the information that the State Engineer needs, you can be out.

As a Water Right owner I'm going to look at the Water Code and I'm going to look at the Rules. I am not, in my wildest imagination, going to look at the Rules of the Interstate Stream Commission, and that illustrates the problem, the structural problem and the legal problem with having Section 16 in this Rule.

It's not authorized by the Act. It is basically the ISC telling the State Engineer what to do and how to do it, and that's improper.

I sympathize with Nat on good policy issues and that we need to talk about Public Welfare, I agree. We do need to talk about Public Welfare. It is a huge issue, and it's becoming more of an issue, frankly, in Water Rights Transfers.

For the first 25 years of my practice, or maybe more, Public

Welfare and Conservation were the "also rans" in a Water Rights Transfer. The big issue was, and still is, really Impairment. Are you going to hurt anybody by transferring this Water Right?

Conservation and Public Welfare are becoming more and more important in Transfers and other types of Applications, but that should be decided in a State Engineer proceeding because the Interstate Stream Commission does not have the power to tell the State Engineer how to do it, and that's simply my point here.

Again, I understand that Public Welfare is extremely important and it needs to be discussed, but telling the State Engineer what to do in this Rule is improper.

Taking out Section 16 does not remove consideration of Public Welfare in Transfer Applications. As Nat said yesterday, it's already there, and I know that. I have

litigated cases where it's there. It doesn't stop the Regions from talking about and deciding what "Public Welfare" means to them.

The point of my Comment and Senator Lanier's Comment is that this section is just inappropriate. You can accomplish everything you need to under the Act without this section.

I would move on to the next slide, please.

I also think, as we have discussed and you've heard many times, we need to expand the membership on some of the Councils. Senator Lanier gave you the language, so I'm not going to repeat that.

The critical thing to know is that I'm part of 2 different organizations that are Political Subdivisions. I represent the San Juan Water Commission in their Water Rights matters, and I have for more than 30 years. They are not included in the list of Representative entities

because I looked at that list when it came out. I was like, "Where does the Water Commission fit?" It does not fit in any of those.

The one that it might have fit into is the one that says: "You have been a Water Planning Entity continuously," so then you get on the Board.

Well frankly, when the ISC stopped doing Water Planning, so did the San Juan Water Commission, so they don't fit within that particular criteria.

The other organization that I have been involved in for the last couple of years as a Director, an elected Director, is Albuquerque's Flood Control Authority, known as AMAFCA.

We have the big snowman on I-40 every Christmas. That's AMAFCA, and it is a Political Subdivision. We have the power to impose taxes, and we do, to build like the North Diversion

Channel and other flood control facilities.

One of the PPPs, or one item within the PPPs is flood control; right? Stormwater. That's what AMAFCA does, but it's not on the list of Representative entities.

F we could turn to the next slide, please, to the language.

The last bullet there, which is in addition, I just put this in there.

(g) is an addition. (h) is in there, and we just changed the letter. (I) is also a new provision, and that's the one that has additional Political Subdivisions.

I tried to write it such that it wouldn't open the doors too wide to every Tom, Dick, and Harry, but it says, "Specifically if you are a Political Subdivision in the Region not falling within the previous membership categories, then you have the opportunity to sit at the table."

Again, I think the one fear I've heard is that, "Well gosh, if we open it up to all Political Subdivisions then we will just be inundated with members."

One, is that really a bad thing? Perhaps not.

More importantly I think that Political Subdivisions that don't have anything to do with water will not come; right? I mean they just won't participate because they have other things to do. I think that fear is somewhat unfounded, but I think it is important to open the door for membership for Political Subdivisions that are not otherwise listed in those criteria, and that's the goal of that.

Similarly, with the "Rural Water Users Associations," there are some that organizationally don't fit into any of the other categories, but they also ought to have a Representative, and that's the point of that language.

Next slide, please.

That lovely map, we pulled that from the State Engineer website; the State Engineer has a lot of great maps. We wanted to use it as just an illustration of how we think the map would be better, because the map that's on the back page of the Proposed Rule doesn't even have counties on it. It doesn't have any markers. We couldn't tell what counties were in the Northwest Region, but that map does, and it has way more than that:

It's got townships. It has the Groundwater basins, which is what you see there. It has the rivers. I'm just asking for an overlay on the map.

I think the argument about the Regions, whether they are big or small, that's a separate argument from what I'm asking. I am just asking for more information for the public to make the map better.

Then the other drafting

issue, if you could go to the next slide, please, is the Severability Clause, and that's in a lot of regulations.

For example, if you do keep Section 16 and a court decides it's ultra vires, which is what I argued in my written Comments, then the question becomes, "Well gosh, does that knock out the whole regulation and the whole Rule?"

A Severability Clause like we have suggested here would allow the Rule to go on even if some piece of it is deemed invalid, so it is really just a drafting thing.

I'm sorry. Before I was a Lawyer I was a newspaper editor, and so, you know, words are very important to me. Ask anybody whose memo I have read and given them back covered in red.

I think it's important from a drafting perspective to have that clause.

Then if you would go to the last slide, please.

This is just -- you know, I can't say I read every word of the 85 Comments, but I read a lot of them. I certainly do agree with the Director of the ISC that it's essential to have local governing entities represented in the Councils, and that's the goal of our addition of the Political Subdivisions.

We agree that the Acequias, while they are very important, they don't have the same standing as the Tribes and should not have a Council.

I agree with Mr. Chakeres that the Regional Planning Councils do not bind the State Engineer, and that's very important, but as we have tried to explain we think the Rule goes too far.

Then if the language stays, he had suggested making it "... shall consider...," but keep it as "... may... " is my view.

We agree with the Pueblo of Acoma and Sandia, and I think another one in that simply the Public Welfare section is beyond the ISC's authority under the Act.

With that, thank you very much for your attention, and thank you for your endurance during this hearing. I know it's been tough, but I really appreciate your efforts and Staff's, too. I have enjoyed working with them on this.

With that, I think Senator Lanier and I would stand for any questions.

HEARING OFFICER ORTH: Thank you.

All right. Let's see if the Commission has any questions.

Commission questions in the room.

Commissioner García.

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EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you, Senator, and thank you, Ms. Taylor.

Is the New Mexico Rural Water Users Association an entity that's defined in Statute?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: I don't believe so.

Q. And what's the purview of that organization?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: Do you want to speak to that?

A. BY SENATOR STEVE LANIER: Go ahead.

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: Okay.

Well in San Juan County it is an umbrella organization made up of all the -- I think there is 7 or 8, maybe more other Rural Water User Associations, which is an umbrella association that actually has a seat on the Board of the San Juan Water Commission.

Q. Okay. So this is the New Mexico Rural Water...

Who does the New Mexico Rural Water Users Association represent?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: Its member entities.

Q. And what type of entities are they?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: There are also, you know, other flavors or other small...

Well they are rural water associations, so they could be a Mutual Domestic or a Co-Op, or some other type of a rural water.

There's, like 7 or 8 different organizational types of rural water associations.

Q. The San Juan Water Commission, is that considered a rural water association?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: No.

The San Juan Water Commission itself was formed in 1986 under a

Joint Powers Agreement under the Joint Powers Agreement Act. It's made up of the cities of Aztec, Bloomfield, Farmington, the County of San Juan, and the rural associations.

Q. Does this New Mexico Rural Water Users generally represent Community Ditches?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: Yes.

A. BY SENATOR STEVE LANIER: Yes.

I think the difference is we only have a 5-Commissioner Commission, so we didn't want to have, you know, a 20-Commissioner Commission. All of the water associations fit underneath that umbrella, so then they talk and send us 1 representative to the San Juan Water Commission.

Is that clear? It's different than Acequias.

Q. Are you saying that Community Ditches are different from Acequias?

A. BY SENATOR STEVE LANIER: In our area, yes.

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: Legally they are the same.

Q. Because they occur in the same statute.

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: Right.

A. BY SENATOR STEVE LANIER: Yes.

Q. And then any recent statutes that have mentioned Acequias and say "Acequia and Community Ditch," like "Acequia and Community Ditch Fund," or "Acequia and Community Ditch Infrastructure Fund."

You're saying in your Region you consider them different.

A. BY SENATOR STEVE LANIER: Yes.

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: They have a different outlook, but legally they are the same.

A. BY SENATOR STEVE LANIER: It is the same, but we consider them different.

Q. Okay. What do you mean by "... different outlook..."?

A. BY SENATOR STEVE LANIER: We let

them, the Acequias...

I don't know how to answer that to be honest with you.

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: Well the Acequias tend to be historic organizations, you know, from the 1600s forward, and the Community Ditches, at least in San Juan County, are much more recent; from the late 1800s.

Q. Okay. I understand.

They do govern themselves with the same types of bylaws as Chapter 72, Article II and III?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: Yes, ma'am.

One difference, too, that we're talking about here for rural associations is that there are other sorts of rural water associations that are not Community Ditches. They are Co-Ops, and there are other forms that would be included.

Q. Except that you're suggesting that Community Ditch Associations be

appointed by the New Mexico Rural Water Association.

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: There may need to be some amendments to that language.

COMMISSIONER GARCÍA: Thank you.

HEARING OFFICER ORTH: Questions, Commissioner Carrasco.

EXAMINATION

BY COMMISSIONER CARRASCO:

Q. Good morning. Thank you for your Testimony.

For Ms. Taylor, just real quick:

You testified about the inclusion of Section 16(A) through (C). At one time you called it "improper," and in the other place you called it "inappropriate."

Are you familiar with the Water Security Planning Statute that, under Section 3, states:

"Nothing in this Water Security Planning Act shall

be construed as permitting the Condemnation of Water Rights, or as determining, abridging, or affecting in any way the Water Rights of Water Right owners in the State"?

Is that the basis for your statement that they may be "improper" or "inappropriate"?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: That is part of it, and thank you for that question.

My concern about Section 16 is more of a structural concern in that the Act itself does not give the ISC the authority to tell the State Engineer what to do, and the ISC is not the State Engineer.

That section you just read gives me great confidence and great comfort that the decisions under this Rule can't affect a Water Rights owner's rights, but to me it's kind of a slippery slope. It just seems...

I don't know how to reconcile that particular part of the Act with the directive in the Rule as to how the State Engineer should decide a Transfer Application.

To me, those are in conflict, and I think, you know, the simplest way to look at it, as I explained, is when you want to know how to Transfer a Water Right, you look at the Water Code and you look at the Rules and regulations of the State Engineer. You're not going to look at the Rules of the Interstate Stream Commission.

Q. Thank you.

I have a question for the Senator, please:

Ms. Taylor testified that the deletion of Section 16 would still allow this Rule to accomplish everything that was required under the Water Security Planning Act with whatever amendments that are later done. Is that your position as well, Senator?

A. BY SENATOR STEVE LANIER: Yes,

it is. Representing the San Juan Water Commission, that is our commission's position, too.

COMMISSIONER CARRASCO: Thank you.

HEARING OFFICER ORTH: And Commissioner Chavez.

EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. Thank you, Senator. Thank you, Ms. Taylor. Quick question:

You said that the San Juan Water Commission was composed of Rural Water Users Association and municipalities in the County. With this Public Welfare Statement, in discussing of it, do you think the organizations within the San Juan Water Commission can come to a Public Welfare Statement?

A. BY SENATOR STEVE LANIER: Thank you, Commissioner.

It sounds funny being on this side of the table with you, but I do. I think that there are so many

organizations, and it's such a large area, and there are so many different views I think it would be very difficult for them to come up with just one. I think with some guidance and with several meetings they might be able to narrow it down to just one, but knowing that group of people, that would be very, very difficult.

Q. Just within the organization it will be difficult, much less the whole Region.

A. BY SENATOR STEVE LANIER: That is correct.

Q. Then what is your view between you 2 of the concept of Subregions? I mean how do you feel about that process?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: I think Subregions are necessary especially given the large size of the 9 Regions.

As we've heard, you know, for example, in the Rio San José Adjudication Settlement, that is a

Water Plan that probably should have its own Region. I'm not speaking for the Commission here, but I think it is a really good idea.

I mean there are parts just within the Northwest Region that includes San Juan County where there are...

I mean there are parts of that Region that are hydrologically distinct that do not have any hydrologic connection at all, or any really historic connection, so I think it would be very difficult to have a Planning Council and have the process without Subregions. I think the Subregion accommodation is a very important one.

COMMISSIONER CHAVEZ: Thank you.

HEARING OFFICER ORTH: Other Commission questions in the room.

Commissioner questions online.

No.

Thank you very much,

Ms. Taylor and Senator Lanier.

MS. ELIZABETH NEWLIN TAYLOR: Thank you.

COMMISSIONER BALOK: Madam Chair.

HEARING OFFICER ORTH: Yes. Is that Commissioner Balok?

COMMISSIONER BALOK: It is. I'm sorry; I had my hand up. I did have a question for Senator Lanier and Ms. Taylor.

HEARING EXAMINER ORTH: Go ahead.

EXAMINATION

BY COMMISSIONER BALOK:

Q. Good morning. I appreciate your Testimony. I wanted to just scratch a little more on this Public Welfare concept:

I mentioned yesterday that I do think it's complicated, but my question to you from the context of many of the things that you just said is would it not be better for a Region to put forward their concept of what Public Welfare means, and for the

State Engineer to consider, versus the State Engineer making that decision of what Public Welfare is without that, if you will, consultation or review?

I understand your perspective and being very careful about how we would define that, but it also occurs to me that the interests of Vaughn, New Mexico, may be quite different than those of Bernalillo County. If Vaughn is given a chance to say, "This is what is important to us in this Region," that would give the State Engineer something tangible to review versus just weighing it from the perspective of the greater good.

Help me get my arms around balancing those 2 viewpoints.

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: Thank you for the question, and that's a really important point.

I know, Commissioner, that you have been through a few State Engineer hearings, but just to explain to the Commissioners who may not be

familiar with it, every Protested Application, if it goes to hearing, there are at least 3 parties: One party is the Applicant. Another party is the Protestant, because they are complaining about it. The third party is the Water Rights Division. That is a Division within the State Engineer's Office, and that's the Division that Mr. Chakeres runs as part of the Litigation and Adjudication section.

The Water Rights Division always goes last, and they are considered and have the function of being the gap-filler. They are there to present information to the decisionmaker, the State Engineer, of information that they should consider that the other parties don't present.

The WRD, Water Rights Division, always could bring in and probably should bring in -- I agree with you Commissioner -- whatever a Regional Plan has determined is in the Public Welfare for that Region. There

is nothing in the Rules of the State Engineer proceedings that prevents that, and I understand the position you're taking, and I agree with that.

I think that probably the Applicant or the Protestant would also bring in the Public Welfare decisions of the Planning Council if it was relevant to that particular Application. If they don't, the Water Rights Division certainly can.

I think we heard yesterday how the Water Rights Division has guidance from Nat and from his Office as to what they should consider as "in the Public Welfare." He can just add, "If there is any decision of the Regional Council or Water Planning Council, that comes in, too."

I hope that addresses the concern you're raising.

Again, I believe Public Welfare is very important and becoming more important, but that's the way to get it into a State Engineer hearing

instead of having this Section 16 of the Rule.

Does that answer your question, sir?

Q. Thank you, but maybe not.

Here's where I'm coming from:

If I am the Protestant, then I am going to seek other like-minded individuals that would argue that Public Welfare means something that supports my position. If Section 16 is left in there, these Regions are then asked to weigh that and put forward or try to articulate what that Region's Public Welfare actually is.

To me, I see the potential, but don't get me wrong; I recognize the pitfalls here.

It seems like I keep going back to maybe we are letting perfect be the enemy of good here in that having something from those Regions that is spelled out that says, "You need to address this and put something forward," it doesn't bind the State

Engineer to say, "Well they said that's their opinion, and therefore it must be," but at least the State Engineer has something that that Region has articulated as being of value to them that is part of this nebulous, hard-to-articulate concept of public good.

I'm really of 2 minds on this: I recognize we don't want to try and define it across the Board, but I still keep going back to wouldn't it be better to have an idea what that Region thinks is important rather than it just being litigated by a particular Protestant or Applicant?

A. BY MS. ELIZABETH NEWLIN TAYLOR, ESQ.: I understand your position there, but I would point out that the Rule itself, besides Section 16, is what requires the Planning Council to come up with a Statement of Public Welfare. That's included in the other parts of the Rule, and it is not dependent on Section 16.

Section 16 just says what the

State Engineer has to do with that decision, but the rest of the Rule, the other parts -- I can't find it right now for you.

The other parts of the Rule require the group to look at Public Welfare and to say how they looked at Public Welfare, and I think that's important. That's in the Rule, and would still be in the Rule if Section 16 is eliminated.

COMMISSIONER BALOK: Thank you very much.

I see what you're saying and I appreciate the testimony and the answers of both of you.

Thanks, Madam Chair and Mr. Chairman, and fellow Commissioners.

HEARING OFFICER ORTH: Thank you, Commissioner Balok.

Any other Commission questions?

No.

Thank you both.

MS. ELIZABETH NEWLIN TAYLOR:

Thank you.

HEARING OFFICER ORTH: We need a break now, and it is 10:45. Let's come back at 11:00.

We do have 2 brief Comments online, and then we'll turn to Mr. Gaume and Mr. Wessely.

All right. Thank you.

(The Evidentiary Hearing recessed from 10:45 a.m. to 11:00 a.m.)

HEARING OFFICER ORTH: Let's come back from the break, please.

We are back after a short break.

I understand we have 2 Commenters online, and one is Laura McCarthy.

Ms. McCarthy, can you hear me?

MS. LAURA McCARTHY: I can hear you now.

HEARING OFFICER ORTH: Terrific, and we can hear you clearly.

If you would spell your first and last name, please.

MS. LAURA McCARTHY: Laura, L-A-U-R-A; McCarthy, M-C-C-A-R-T-H-Y.

HEARING OFFICER ORTH: And state your affiliation.

MS. LAURA McCARTHY: I am the State Forester, which means I am the Forestry Division Director at the Energy, Minerals, and Natural Resources Department.

HEARING OFFICER ORTH: Thank you. Go ahead.

LAURA McCARTHY,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. LAURA McCARTHY: Okay. Thank you for letting me make these Comments. I am going to be repeating some information that was also provided in a letter from the Energy, Minerals, and Natural Resources Department in tandem with Comments from our State Parks Division.

The primary thing that I want to emphasize is that overall, my feeling about the Rule is that it's very good, but it is missing one really, really important consideration for current and future generations of water users, and that is the impact of wildfire on watershed function and associated uses of water.

If we're really going to do good water planning, we have to be considering wildfire impacts, and even potentially doing projects that can mitigate the impacts of future wildfires.

I'm going to go through 3 different and specific ideas, and then give you an example of what the community of Flagstaff is doing in this area:

First is that the Rule should explicitly recognize the impacts of recent and historic large-scale wildfires on Regional Water Security. I know that some of the Commission

Members have experienced this firsthand, you know.

What I'm talking about in the arena of Councils being directed to draw on Burned-Area Emergency Response Assessments and other long-term recovery strategies where they are available, and thinking ahead to restoration priorities such as reforestation, riparian stabilization, and erosion control.

Now this won't be applicable in every single part of the State, but almost every watershed will have some vulnerability.

Second is that the Rule should require the Councils to evaluate wildfire risk using the best available modeling for watersheds where major water infrastructure is located. That could include Climate-Informed Wildfire Projections.

Third is that the Rule should encourage Councils to integrate existing tools and plans that already

address wildfire and watershed risk.

For example, every county in New Mexico has a community wildfire protection plan. For those Regions that have National Forests, the National Forest maintains a Watershed Condition Framework.

Fourth, the USGS does post-fire hydrologic studies that could be useful to the Regional Councils.

The example I want to give, and this will be my second to last point:

The example in Flagstaff is they experienced a wildfire that really devastated a portion of their community. In doing so they realized that they had other watersheds that weren't burned yet that would also, if burned, create really severe problems for their downstream infrastructure, so they created a project to essentially establish a post-fire water holding zone within their community.

They did this before it burned, so it actually hasn't been tested, but they used their resources to prepare the community to absorb post-fire flooding before the flood.

That's the kind of thinking that we are recommending be incorporated into the Rule, to guide the communities or to guide the Councils in their work.

Finally then, like the State Parks Division, we are also requesting that there be a position on the Regional Councils for an employee of the Forestry Division who can be a technical advisor to the Council in these matters.

With that, thank you for the opportunity to Comment.

HEARING OFFICER ORTH: Thank you, Director McCarthy.

Are there Commission questions of Ms. McCarthy?

Commissioner García.

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EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you, Ms. McCarthy, for being here, or Forester McCarthy; I'm not sure what your title is.

I was wondering if you could -- I appreciate the example about the post-fire water holding zone, and I'm so appreciative that you brought these concerns forward about wildfires.

Could you give an example of another recent wildfire and the impact of wildfire on water infrastructure? For example, Hermits Peak/Calf Canyon and the City of Las Vegas and other types of infrastructure.

A. BY MS. LAURA McCARTHY: Sure, and thank you for the question.

In the case of the Hermits Peak/Calf Canyon fire, the City of Las Vegas is reliant on water from the Gallinas River, and that watershed was one of the most damaged by that wildfire. To this day, 3 years after the fire, the water supply for Las

Vegas is very insecure. That's because you've got multiple things happening:

One is the continual movement of debris and ash out of the burned watershed for as long as even 10 years, so we're only partway through it now.

Then second is the ability of the water infrastructure to deal with the amount of ash and debris that is coming into their system.

We have examples from the South Fork and Salt Fire of water continuing to move and flood through the community itself, moving homes downstream; like literally tearing them off of their foundations and entirely destroying them, and a U.S. highway being washed out in sections.

The economic damages from both wildfires, Hermits Peak/Calf Canyon and the South Fork/Salt in terms of watershed damage, have been in the billions, and yet we know that wildfire is going to happen. It's not an "if," it's a "when" question.

Looking into the future there is opportunity to build resilience.

COMMISSIONER GARCÍA: Thank you. That was very helpful.

HEARING OFFICER ORTH: Thank you.

Other Commission questions in the room.

Commissioner Suina.

COMMISSIONER SUINA: Yes, thank you, Madam Hearing Officer.

And thank you, Ms. McCarthy, for coming to -- or State Forester McCarthy for coming to our Commission hearing.

EXAMINATION

BY COMMISSIONER SUINA:

Q. I was just wondering, could you elaborate a little bit more about your thoughts on stewardship of the forest in relation to the connectivity to watersheds and water supply, and how we could enhance or bolster that consideration in water planning underneath these Rules?

A. BY MS. LAURA McCARTHY: Yes, and thank you for that question as well.

I think, you know, at the scale of the Regional Council it will be very clear as to which sub-watersheds and basins are the most important in terms of the downstream infrastructure and the provision of native water.

The Councils would have an...

The way I see it, the Councils have an opportunity to first identify the areas of forest that are of most importance from a water supply and water resilience perspective. Then, in working with our Forestry Division Staff we can co-plan projects that are ecologically appropriate for that forest condition and basically restore the forest condition such that when wildfire happens, the fire burns at low severity and not at high severity.

The difference there is going to be in the post-fire impacts because low severity fire typically burns

through grasses and undergrowth and kind of licks at the base of trees, but does not burn the trees entirely.

It also burns in a patchy way such that when rainfall comes, it is absorbed normally by the watershed.

In contrast, the high severity fires that we're trying to avoid scorch everything and creates a hydrophobic layer of ash that water can't penetrate, and so water flows downhill fast creating the debris flows that we are trying to avoid.

I hope I answered the question.

Q. Yes.

If I can maybe ask a follow-up question that will help clarify:

What we see in, you know, common water planning is for infrastructure projects; right? Like, if we're doing new Points of Diversion for new storage of water or other types of -- or new piping, you know, or I guess what, you know, could be

identified as hard infrastructure or engineered systems or engineered infrastructure.

I guess what I'm trying to get at is from your perspective is stewardship beyond, say, hard engineered projects and consideration of stewardship of the forest important in water planning? If so, do you see that currently in our Proposed Rules as a criteria for consideration?

A. BY MS. LAURA McCARTHY: Okay. Thank you.

I did not see it in the Proposed Rule as a criteria, but I do think it is important.

The forest functions like green infrastructure because when the forested watersheds and the streams within them are functioning normally, they have water retention capacity. They release water in the form of surface flow, especially during the spring, fall, and summer, and of course in Southern New Mexico, a little more

year-round.

You know, the past iterations of the Regional Water Planning efforts have all identified watershed restoration and stewardship as an important component and responsibility of water managers. The State's 50-year Water Action Plan also identifies forest stewardship and management as one of the strategies, that being Strategy C4.

The reason that EMNRD is recommending that a representative of the Forestry Division be added to each Regional Council is in order to make the communication and consideration of where projects should be located for the benefit of water resilience a more institutional and seamless process.

If you don't have a person with that forestry expertise sitting on your Council, then it is going to be a lot harder for the Council and the Department to work together to actually do real projects that steward

the forest and improve water reliability over the long run.

COMMISSIONER SUINA: Thank you for that response.

Madam Hearing Officer, that's all the questions that I have.

HEARING OFFICER ORTH: Thank you.

Any other Commissioner questions?

All right. Thank you very much, Ms. McCarthy.

We have someone online identified just as iPhone-1. Can you unmute yourself and identify yourself.

MS. YVONNE ARAGÓN: Yes, good morning. This is --

HEARING OFFICER ORTH: I'm sorry. Would you state and spell your name, please.

MS. YVONNE ARAGÓN: Yes, my name is Yvonne Aragón; Y-V-O-N-N-E, Aragón, A-R-A-G-O-N.

HEARING OFFICER ORTH: State your affiliation.

MS. YVONNE ARAGÓN: I am a

Parciente. I am also an heir to the Anton Chico Land Grant. I have a couple of Comments that I would like to share with the Commission, if that's possible.

HEARING OFFICER ORTH: Yes, go ahead.

MS. YVONNE ARAGÓN: Thank you. Give me just a second here so that I can get my notes up.

YVONNE ARAGÓN,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. YVONNE ARAGÓN: Myself and my family have lived in Anton Chico and the surrounding communities for generations. Our lives, lands, and livelihoods are tied to the individual Acequias that distribute the water that have been built and maintained through the cooperation of shared responsibilities.

These Acequias represent some of the oldest and most Senior Water Rights in New Mexico, protected under the longstanding principle of "First in Time, First in Right."

The Anton Chico Land Grant is one of the largest communal Land Grants in the State. It continues to protect the interests of local families and serves as the foundation for responsible stewardship for both the Land and Water. Its legacy is directly linked to the preservation of our Acequias and the sustainable use of the Pecos River.

Regional Planning, in my opinion, must recognize and respect these traditions by ensuring no pumping should be allowed directly from the Pecos River, as such actions disrupt the natural flow, harm Acequias, and operations that threaten Senior Surface Rights.

Each individual Acequia must be recognized and protected according

to the Senior Priority Date, honoring the doctrine "First in Time, First in Right." Any transferred or newly permitted Water Rights must be designated as Junior to existing rights on each Acequia to prevent Impairment or injury to Senior users. Transfers of Water Rights should not be approved if they reduce the flow or harm to local Acequias and the families who depend on them.

Acequias must also be upheld and enforced as authorized by New Mexico law. These Bylaws represent legally recognized local governance and ensure that water Transfers, Diversions, and operations align with community values and long-established customs. They must not be overridden or disregarded by the State Engineer.

Acequia members, Land Grant representatives, or local right-holders must have a meaningful voice and a seat at the table. In all Regional and statewide water planning

discussions, Acequias and Land Grant governance structures must be supported with technical and legal resources to help protect water systems and defend Senior Water Rights.

The people of Las Vegas, Anton Chico, and all surrounding areas, and Acequia communities across New Mexico, have protected and shared their waters for centuries through cooperation, fairness, and respect for Seniority. Upholding Acequia Bylaws prohibiting river pumping, maintaining Senior Water Rights, and ensuring local voices are heard, and not only legal duties, but moral responsibility that preserves the heritage of future generations.

Thank you for allowing me to speak.

HEARING OFFICER ORTH: Thank you, Ms. Aragón.

Are there Commission questions.

No.

I thank you very much.

MS. YVONNE ARAGÓN: Thank you. Bye-bye.

HEARING OFFICER ORTH: And I see one more commenter online, J. Swan.

MS. JESSICA SWAN: Hello. Thank you for allowing me some time.

HEARING OFFICER ORTH: Would you state and spell your first and last name, please.

MS. JESSICA SWAN: My name is Jessica Swan; -E-S-S-I-C-A S-W-A-N.

HEARING OFFICER ORTH: And your affiliation?

MS. JESSICA SWAN: I am a Land Grant heir from Polvadera, New Mexico.

HEARING OFFICER ORTH: Thank you. Go ahead.

JESSICA SWAN,

after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MS. JESSICA SWAN: Hello. Thank

you for taking my time and Comments, Commission:

My name is Jessica Swan, and I am a Land Grant heir working with Parciantes throughout New Mexico whose lives depend on water.

I generally support the Proposed Rules for the Water Act, but I encourage you to add Rules that are these:

The Rules need to include language to create the Acequia and Rural Water Security Advisory Working Group. This Group should be statewide.

The Rules also need to include having 0 ISC Planning Regions overlapping and/or contained within Councils of Governments.

Throughout these Rules we need more language that allows the public more opportunities for community engagement such that we can:

Add input about wildlife impacts;

How our state parks are

important to us;

How our crops are important to us;

How our future generations demand non-extractive renewable energies to continue thriving here in our ancestral lands; and,

Finally we would support including 1 member from all Mutual Domestic Water Consumer Associations.

Thank you, Commission, for the opportunity to speak.

HEARING OFFICER ORTH: Thank you, Ms. Swan.

Are there Commission questions.

No.

Thank you very much, Ms. Swan.

I believe, then, we can move to Mr. Gaume.

MR. NORMAN GAUME: Thank you, Madam Hearing Officer and Chairman Sanchez, and members of the Interstate Stream Commission.

My name is Norm Gaume;

N-O-R-M G-A-U-M-E.

I am President of the New Mexico Water Advocates and a former ISC Director from 1997 through 2002.

Bob Wessely, the past President of the Water Advocates, will follow me to present some Redline markups to the Proposed Rule.

NORMAN GAUME, P.E.,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. NORMAN GAUME: The Water Advocates is a unique nongovernmental organization because, from our inception, our goal has been water balance. Not any water for any particular segment, but balance.

The Hearing Officer has invited me to characterize my testimony here to you today, any the way I chose is I'm choosing to present my Testimony as that of an expert. I swear that I

am telling you the truth, and that everything in my Narrative CV is accurate and truthful.

I am a Registered Professional Engineer with retired license status. Engineers are trained to solve problems, and that's what engineers do. Problems require a definition before you work on the solution.

Complex water resource problems are best solved through water planning. Your engagement has been truly impressive, and for me it's been comforting. Thank you. I have confidence in you truly. Your diversity is a major strength. Thank you for accepting such robust Public Comment; the public has a lot to say.

My purpose here today is to help the Commission strengthen this Rule and to clearly frame an effective planning process such that the Rule can endure for much longer than the 6 years program Staff described.

My Testimony today is

organized in 4 sections:

framing;

Other relevant history;

Entirely missing statutory and professional water planning practice requirements; and,

A path forward that I recommend for you.

As I said, the purpose of water planning is to solve problems. Water resource problem-solving is technically and socially complex.

The first step in problem-solving is naming and describing the problem that needs to be solved. That needs to be done very clearly in the Rule, and you should require all Councils to do that as a first and maybe a last step to check their plan.

I ask: Do these attributes make sense to you?

Two years for each cohort of 3 Regions to plan after waiting years to complete Staff preparation that allows them to plan?

Doing everything in series, one after another after another, as opposed to doing things in parallel wherever you can?

What is it possible to do in 1 year or 2? Has the ISC's planning Staff analyzed that? Please ask them.

This Rule, as drafted, is vague, incomplete, and ambiguous, and your questions and Staff responses on Wednesday demonstrate that I hope, or at least it's implied.

Most of the Planning Program Staff Wednesday did not address the Proposed Rule; your questions did. Now it's up to the Commission to fulfill its statutory charge.

You know that getting this program up and running is urgent. You know that New Mexico is sleepwalking into disasters across the State due to overuse and increasing scarcity. Science says we are just beginning.

Perhaps Catron County doesn't need or want a water plan, but they

don't have to participate; this is all voluntary.

Certainly Grant County and Luna County do. But regardless, the Commission has a mandate.

The Testimony presented to you Wednesday shows that ISC Staff decided the program would throttle the pace of planning, making ISC planning Staff capacity the indispensable resource. This indispensable scarce resource is a consequence of Staff decisions that I believe were made without your input or review. Instead the Commission needs to trust New Mexicans to come to grips with the facts based on science and data the Commission is required by law to provide.

Water planning requires professional water expertise. The public recognized that in the Open House responses to Question 11:

64% of Respondents, a majority in 14 of 17 Regions, preferred

that members of Regional Water Planning Councils have professional, rather than personal water experience. The public said water Planning Councils should be democratically constituted.

58% of responses, a majority in 12 of 17 Regions, preferred that members of Regional Water Planning entities be elected rather than appointed.

Water planning requires time. The Rule is completely silent on time frames, but Staff intentions are clear; they intend Regional Water Planning will be compressed to 2 years. In my professional experience, that that is impossible. Impossible.

Planning must address equitable needs that are not going away. Those were the words that State Engineer General Counsel Nat Chakeres used in presenting a workshop to the Water Advocates that was open to the public last May, just a few months ago. He cited junior cities and

municipalities with schools and hospitals as the basis of most of our economy. Functioning rivers and public demands for water, none of these are recognized in the prior --

I'm sorry, I don't know what's happening; I was timing myself.

Planning must address equitable needs. No court is going to cut off a municipality or a school or a hospital, and we already know from Supreme Court rulings that nobody is going to cut off my domestic well. Again, I would reference the remarks of the State Engineer's General Counsel, and the way he expressed it was powerful.

The Planning Program is voluntary. For it to succeed it has to be attractive. To be attractive people must believe that this is the better way forward.

Please consult with your expert consultant, Kristine Whitney Sanchez, who advised the Water

Advocates pro bono for a considerable period of time almost 3 years ago now. She will tell you what's required to implement fundamental change, and that's what New Mexico's water management requires.

Every stakeholder must feel that they are represented at the planning table where the hard and intensive work of water planning is done.

Every stakeholder cannot be at the table. I acknowledge that no one but the Sovereign Pueblos, Nations, and Tribes themselves can represent themselves, but a Planning Council consisting of dozens to hundreds, or over a hundred is going to find it very hard to gain traction.

The law says that many things must be considered. Consideration can be a checkbox, yes, we considered that, but the Commission must require that consideration be substantive and reviewable after the fact.

Councils following their substantive consideration that your Rule must require have statutory autonomy to decide how they will react to that consideration. There is nothing that makes them adhere their plan to their considerations; they have autonomy. But you must make them, please, do a real consideration, a consideration that is meaningful.

Be careful of unintended consequences that will result from patching up the Proposed Rule to make up for incomplete thinking. The example would be how the Rule invites big water authorities, Regional water authorities, and rapidly proliferating very small Regional authorities.

I work with my County Commissioner in Sandoval County. She is trying to get the small water systems in Placitas to regionalize. She is trying to get small water systems in the Jemez to regionalize. That would add dozens or numerous

entities.

I want to talk about other relevant history that has not come up:

There was a mismatch between the 1987 Water Planning Statute, the first one, and the Handbook's expectations. The Statute said that Regional Water Plans were needed to show New Mexico needs all of its water as a defense against Texas as you have heard. The Statute said nothing about implementation of anything.

The 1994 ISC Handbook called for real water planning and some Regions did that diligently. But the Statute called for Shelf Reports, or that's all that needed was, a report on a shelf.

When the ISC received subsequent Water Plans from the Regions, I don't think it knew what to do with them. You should consider the ISC's process to create the Handbook in 1994 as a way to get this Rule right. See the 1994 Handbook, ISC Exhibit 3, page

2, second complete paragraph.

The 2023 Statute, on the other hand, is robust. It was passed with remarkable bipartisan, bicameral unanimity; not a single "No" vote. It gives you clear authority to set expectations. The mismatch now before you is that the Statute is stronger than the Proposed Rule.

Substantive amendments were made during the process by the 2023 Legislature. The amendments I'm just going to list off:

One made it explicit that water planning in no way affects the Water Rights of Water Rights owners.

Two, it replaced non-economic environmental values with Public Welfare Values.

It requires consideration of the needs of future generations of New Mexicans; an excellent way to describe the need for more resilience and sustainability.

It added the concepts of

Programs and Policies to Projects. It replaced at-risk communities with rural communities. It added Regional Council authority to compose themselves; that's in Section 5C(1) of the Act.

Your Rule must reconcile that with the section that directs you to shape Councils. That's in 4C(1)(d).

I have every Draft that preceded the introduced Bill. The original language submitted to sponsor Senator Stefanics may be useful to you when you think about how to rebuild the full Rule.

Senator Stefanics, after reviewing the Bill Draft, concluded the Bill was important, but it would never pass unless it was a State Engineer Office Bill, and she made that happen with the Governor's Office.

State Engineer Hammond directed simplification of the Bill. He told me he would not accept the mandates that were included in the

Draft language and wanted to give ISC discretion in Rulemaking.

La Donna Clayton, Bob Wessely, and I negotiated the Bill concepts as introduced by State Engineer Hammond and ISC Director Schmidt-Petersen.

When I complained to former State Engineer Hammond a few months ago about the Proposed Rule, his only response was to remind me that the Planning Program is not the decisionmaker, you are.

I want to spend a few minutes on what's entirely missing from the Rule:

First is the absence of a reasoned framework. The Proposed Rule ignores some statutory provisions that are important, it merely restates some without elaboration, it gives meaning to few.

What is the Staff rubric for deciding how they have addressed each statutory element? You should ask.

Can you read the Rule and

understand the framework?

Why doesn't the Rule require Regional Councils to prepare detailed work plans as the basis of planning ISC Grants to do the hard work of planning?

I've always gone by the saying, "Plan your work and work your plan." Work plans are needed and they need to be Regional, not dictated by the State.

The omission of Public Welfare requirements, and you've heard so much about this in Sections (c) and (e), and I think it's 4C(1)(c) and (e), an operation authorizing the Commission mandates in 4C(3) through (9), and the Commission mandates in 5(b) and (c). Where are those?

How will you reconcile the amendment that gave Regional Water Planning Councils the ability to select their members? That has to be reconciled with the provision that was already in the Rule; it wasn't changed.

You are required to figure out a way to read those together so that they both have meaning.

Throttling of planning progress due to making Staff the indispensable, scarce resource is not in the Proposed Rule, and Wednesday's testimony made it obvious for the first time. Why are there mandatory Staff approval decisions without criteria to make those decisions?

The Commission's responsibilities and oversight seem vague or absent.

Commissioner Carrasco, I remember distinctly your question at the June meeting of the ISC with regard to the Water Planning Work Plan. You asked the planning Staff if they had done an alternative analysis of the staggered or tiered planning, and they said they had not. I followed that up with a public records request, and there was nothing in that request that was pertinent.

The absence of substantive approval criterion performance standards is an issue. All you have is a bare checklist.

There is a simple way to make Consideration meaningful by requiring Councils to understand the consequences of continuing the status quo, in other words the no action alternative, and what would be required for sustainability or for materially increasing resilience.

I see those as 2 end cases that can be illustrated with models and data. My experience is that planning groups can come together around data.

My observation about Public Welfare is that it's very important, but it will be contentious. My experience in specific cases indicates that if you can come together around the hydrologic reality, finding common ground becomes much easier.

Failure to operationalize

Commission and Council responsibilities over specification of administrative detail; I'm going to leave that just as a missing element.

This is a huge one:

Failure to incorporate communities in Proposed Rule concepts. The Regions are an administrative convenience. I discussed that at length with former State Engineer Hammond as we were putting together the Proposed Rule. He was talking about the need for ISC, and the inability, for Planning Program Staff to deal with dozens and dozens of Regions.

The idea was that the ISC would deal with the Regions, and the Regions would invite communities and Subregions to do the planning, because that's where the locus of the problems are. These are communities that are not only geographic, but communities of interest. They are the ones who feel the crisis and the places where

solutions are needed.

Now there is an exception to that for Compact Compliance basins. Obviously those are true Regional problems with Regional scope. The Rules don't create a pathway that would enable shared governance down the road.

The State has proven that it can't manage water by itself. The High Plains and the Rio Grande Compact compliance problems are cases in point. Bringing communities and Regions in now will set the stage for Regional and community problem-solving. That could lead to Regions and local governments accepting responsibility to cooperate with the State and having different levels of management that seek the same objectives.

Last, there is undefined accountability in the Proposed Rule for guidelines. My perception on this comes from my time as ISC Director and even before, when I was the Water

Resources Manager for the City of Albuquerque. The State Engineer's Office, I was told by more than 1 District Manager, used guidelines when they wanted to and disregarded them when they didn't want to.

These Rules need to have structure -- I'm sorry.

The guidelines need to have structure and authority, and that can only be provided in the Rule.

These omissions are not minor. They go to the heart of whether the Rule implements the program created by the 2023 Water Security Planning Act.

Moving forward from where we are:

You have complete authority under the State Rules Act and responsibilities under case law that the State Rules Act cites. I think the way that Madam Hearing Officer and the Commission has conducted this hearing has satisfied most of my

concerns about that.

Specifically you have the authority to schedule another hearing. You can grant public experts the status that you have Staff experts. You are not bound by the process that Staff imposed on all of us.

Acknowledge reality:

Completing a credible Rule will take expertise and a serious effort. I propose a 4-point Commission Action Plan:

Keep the record open, as I know you will do, but invite Closing Statements.

Think about using the 1994 Handbook process; I think it's very applicable at this moment. What that process was -- and, again, I ask you to read that paragraph in the 1994 Handbook.

The Water Dialogue was formed in 1992 in working with the Commission. The Commission ordered that 2 of its members would work with

a small panel of water experts to Draft the Handbook, and others were involved as well.

Think about that as a way forward. If you did, you could direct them to prepare a corrected Draft within 60 to 90 days.

Invite specific members of a short-term Rule revision group with specific Commission participation and oversight.

ASAP authorize and invite applications for modest Grants so representative Regional groups, or groups within Regions using local knowledge and their creativity, can submit specific recommendations to organize their Regional Council.

They can also do other things, like help gather up the data that's not online. I mean there are many tasks that a small Grant to Regional groups who would volunteer to do this work, they could be very productive in helping move this along.

There is an example that I'm very familiar with:

The Legislature appropriated money for outdoor recreation equity groups. I have been a member for decades of the Adobe Whitewater Club of New Mexico. We applied for one of those Grants, and it was easy to get.

In fact, it was so easy that I was wondering if it was corrupt in some way when I first heard about it, ut the Manager explained to me that they wanted any and all ideas, and they were willing to issue modest Grants.

In the case of the Adobe Whitewater Club, we sought a Grant to teach under-advantaged youth from the South Valley of Albuquerque in water recreation and paddling skills.

Schedule a second hearing before adoption to ensure broad legitimacy.

Those are the steps that I propose. I guess I actually said it

was 4, but it's 5:

Keep the record open;

Use the Handbook model;

Invite specific members, and that's really the same thing; and,

Last, stress urgency.

This is truly a crisis that requires urgent action, and delay really signals that you think it's not urgent:

Delay for the ISC to finish one step after the next after the next?

Delay for serial preparation in the Staff's plan to throttle planning is unacceptable and undermines the Commission's credibility.

I have a closing appeal to you:

You have power, very significant power, and I believe you have the moral responsibility to use it. Water is life. Without water, there is nothing.

To summarize, the Rule is not ready and you are responsible. We are where we are, and I think there is a clear path forward that I presented to you.

By requiring a deliberative rewrite of the Proposed Rule and funding Regional self-organization and group efforts that would aid in the long run is something that you can do now with minimal additional effort and guidelines.

There are no statutory deadlines in the Water Security Planning Act. You have the ability to issue a simple guideline that would govern these Regional Grants while you do all of the rest of this work.

Funding Regional initiatives will invite the Legislature's respect and consideration of funding. I urge you to lead this next step and deliver a Rule that New Mexicans rely on for decades. Thank you.

HEARING OFFICER ORTH: Thank you,

Mr. Gaume.

Are there Commission questions of Mr. Gaume?

Commissioner García.

COMMISSIONER GARCÍA: Thank you, Mr. Gaume. Thank you for bringing your expertise today.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. My question is about, I guess, the Rulemaking process and the idea of doing additional work, and the process that you described from the 1994 Handbook process. Could you elaborate on that, and were you with the ISC at the time?

A. BY MR. NORMAN GAUME: No, and I wasn't paying attention either because I was planning to solve the problem of Albuquerque's sole reliance on Groundwater.

I am familiar with the process because I've talked to John Brown, who was the Executive Director

of the Regional Water Dialogue at the time. He is a Board member and is still active with us, and I can read you the paragraph because it's short:

"Responding to a request from Regional Water Planners, the Commission appointed a Subcommittee of Commissioners, Palemon Martinez and Commissioner Tracy Sigmund Hefner, to direct the preparation of a Regional Water Planning Template to guide Water Planners to a useful and uniform project.

"Also the Commission appointed a volunteer work group [I need my reading glasses] to participate in the preparation of the Template and the Handbook.

"Cochaired by the 2 Commissioners, the work group was composed of 14 individuals from diverse constituencies

and Regions, all with substantial experience and background in water issues and management. The group was guided by the hands-on experience of Regional Water Planners, and aided by the staffs of both the Commission and the State Engineer's Office. Together, they have written this document, the Regional Water Planning Handbook, which has been formally adopted by the Interstate Stream Commission."

Q. Okay. Thank you.

It wasn't a Rule; there was no Rule at the time. There was a Statute, and then the Handbook was the tool to implement the Statute.

A. BY MR. NORMAN GAUME: And here you have a Statute and you're mandated to develop a Rule.

Q. Uh-huh.

A. BY MR. NORMAN GAUME: You really

don't have a coherent Rule yet, and so I'm asking that you consider this process.

Q. Okay. I understand.

The other question I had was about guidelines and accountability:

Would it be appropriate to make reference to "guidelines" in the Rule?

In other words, is what you are suggesting is that there be some parameters or guidance in the Rule about what the guidelines would contain and just other ideas that you have, or specifics about accountability?

A. BY MR. NORMAN GAUME: My presentation to you today is a summary of the Expert Testimony that I provided in writing and the section that I wrote on guidelines explains that.

COMMISSIONER GARCÍA: Okay. Thank you.

HEARING OFFICER ORTH: Are there any other Commissioner questions in the room?

No.

Are there any Commissioner questions online?

All right. Thank you very much, Mr. Gaume.

MR. NORMAN GAUME: Thank you.

HEARING OFFICER ORTH: Do we have Mr. Wessely on the platform?

Do we have Mr. Wessely on the platform?

Mr. Gaume, do you need to reach out to him to ask him if he's ready?

MR. ROBERT WESSELY: I just found the unmute button.

HEARING OFFICER ORTH: Terrific.

Would you state and spell your full name, please.

MR. ROBERT WESSELY: Thank you.

Name is Bob Wessely; B-O-B, W-E-S-S-E-L-Y.

HEARING OFFICER ORTH: Thank you very much, Mr. Wessely.

If you would proceed with your affiliation and your statement.

MR. ROBERT WESSELY: Okay. I am the past president of the New Mexico Water Advocates and previously of the Water Assembly, which was the precursor organization.

ROBERT WESSELY,
after having been first called, was examined and testified as follows:

PUBLIC COMMENT

BY MR. ROBERT WESSELY: I want to thank you for the opportunity to speak on behalf of the Water Advocates. My intent is to explain a product we've developed and submitted to you, the Commissioners, for use.

Please refer to my written testimony, and particularly Exhibits B1 through B4 that are in the Docket under:

"Notice of Supplemental Filings."

They are on pages 8 through 34.

As we've heard through lots of testimony, the ISC Staff's Proposed Rule is not right by a long way. ISC needs to figure out how to make it right. It will take some substantial effort and diverse expertise to do so. While we don't have all the answers, we believe our product can be very helpful.

We have assembled as a product a Draft:

"Improved Proposed Rule."

That's Exhibit B2, which we believe can serve for you to use to mark up during your deliberations later in the hearing and well afterwards.

The document we're presenting is a Redline mark up of the ISC Staff's Proposed Rule. We believe it can serve you as a better baseline for your editing during your paragraph-by-paragraph review during deliberations.

Unfortunately, when State Staff converted our submitted product from a Word document to a PDF for the

Docket, they accepted all the Track Changes from the Proposed Rule, making it a little harder to know exactly what was changed. Maybe that file could be resurrected.

But before my explanation of what we're providing, let me divert to summarize backgrounds of me and of the product we're providing you today:

My background:

Most of my career was Technical Director of a 22-person systems engineering management consulting company. One of the key things through those decades of work was structuring and developing requirements for computer procedures and for people procedures, requirements that were precise enough to be unambiguously compelling while not overly constraining on the implementers.

After my retirement I wound up co-leading the volunteer Water Assembly and the development of the $3 million

2004 Middle Rio Grande Regional Water Plan. As an offshoot of the Regional Water Planning, I became heavily involved in the initial drafting and promoting of later drafts; materials that eventually led to the 2023 Water Security Planning Act.

The background on the Proposed Rule product that we're providing today is an outgrowth of a substantial work effort:

The first Draft in March of '23 was followed by a 30-month project working on Rule drafts by a team of a dozen and a half experienced people, about two-thirds of them as reviewers.

The effort included several Draft submissions to the ISC Staff, as well as regular discussions with ISC Staff, and also at their Open Houses, resulting in this product, our 93rd Draft Rule.

The product for the Commission's use has 4 parts:

Exhibit B1 contains a brief

overall rationale of the changes we seek;

Exhibit B2 has a markup of the Proposed Rule, along with reasons for change in each paragraph;

Exhibit B3 is an acknowledgment and listing of the Water Advocates team; and,

Finally, Exhibit B4 contains my Résumé.

Let me summarize Exhibits B1 and B2 and the rationale, and the markup:

Exhibit B1 is our brief rationale for making suggested changes to the Proposed Rule. Fundamentally, New Mexico is already promised and is using more water than we physically and legally have, draining aquifers, shorting Compact obligations.

While engineered projects are necessary, New Mexico basically has social overuse problems for which we need to emphasize improved policies in the planning. We believe the Rules we

are working on today should take vigorous advantage of the WSPA opportunity to plan for resiliency.

The ISC Staff's Proposed Rule does not lay out a water resiliency improvement objective; namely why plan at all, or a process necessary to planning components to reach such a resilience objective.

As a planning process, to meet the WSPA scientific integrity and other requirements for 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 evolving water situations.

The exhibit contains our suggested specific changes to the text

of each paragraph that needed change, as well as reasons for change. Let me highlight 4 key paragraphs of the improved Proposed Rule; they are detailed in Exhibit B2:

First, in Paragraph 19.25.16.10, "Initial Planning Period," we've added language to flesh out the requirements:

Subparagraph (a) would explicitly lay out requirements rather than just descriptions for ISC to fund and support a truly robust, effective Regional Planning process.

In Subparagraph (b), to meet the guidance of WSPA, we place key process requirements on Regional Councils to conduct their planning while providing maximum freedom to account for the vast differences among the Regions.

In Paragraph 19.25.16.12, "Composition of Regional Councils," there we have replaced the existing words to provide criteria for Regions

to define their own interest balance membership in the Councils, rather than imposing ISC Staff's concept of creating balanced Regional Councils.

19.25.16.15, "Criteria For Approval of Plans," we recommend inserting 2 precursor paragraphs, (a) and (b), to provide actual approval criteria for the Commissioners before the Proposed Rule's specification of required plan content.

Lastly, in 19.25.16.17, "Public Welfare and Value Statement for the Region," this paragraph has new text for Regional Councils to develop their own Statement of Public Welfare and Values for their use in evaluating one or more preferred programs consisting of policies and projects.

In conclusion we believe the Proposed Rule forms a good basis for the Commission to inject its desires, including those stimulated by Public Comment, testimony, and exhibits.

While I'm not sure how it can be fit into this formal promulgation 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 Rule.

Thank you again for giving serious consideration to our recommendations, and I can stand for questions.

HEARING OFFICER ORTH: Thank you very much, Mr. Wessely.

I would like to, before we move to Commission questions, address your earlier statement of what I and the Commissioners were provided does have the clearly set out proposals for each of the sections, as you've said, in B2, in red ink above each section that you had recommendations for.

I agree with you that the

Track Changes, that is to say your proposed changes in the specific Rule sections, which I assume were set out in Legislative format, cannot be seen in the written handout that we have.

Ms. Becker, how can we remedy this?

MS. BECKER: Hi. We can remedy this, Madam Hearing Officer, in 2 ways:

First, in the immediacy during the lunch break we could make copies and provide them for the Commission in the afternoon.

Secondly, we could identify that they are in an e-mail and we can transmit them electronically as well, so we can get those to you timely.

I apologize on behalf of the New Mexico Interstate Stream Commission that when we printed them, we failed to turn off the markup version, so that was the bases for the mistake. We will correct it during lunch.

HEARING OFFICER ORTH: Thank you very much, Ms. Becker.

All right. Are there Commission questions of Mr. Wessely in the room?

In the room questions?

No.

Online, either Commissioner Suina or Commissioner Balok, questions of Mr. Wessely?

No.

All right. Well thank you very much, Mr. Wessely, for your Testimony. We will have, before the end of the day -- oh good.

The corrected PDF is already ready to email, so thank you very much for that, Ms. Salazar.

Thank you again, Mr. Wessely and Mr. Gaume.

Let's see. It is 12:15. Should we take a short break before we hear from Ms. Riseley-White; is that a good idea? I think we have just Ms. White to hear from.

All right. Let's just take 10 minutes to 12:25, or do you want a

lunch hour or lunch half hour? What's your pleasure?

Short lunch?

CHAIRMAN SANCHEZ: Fifteen minutes.

HEARING OFFICER ORTH: All right. Let's take --

MS. BECKER: Madam Hearing Officer, I don't mean to interrupt, but what I do want to do is provide full information on what we can expect for the remainder of the day so that we could kind of do a time check on expectations.

What I am envisioning, if I may, is I have 1 witness. I'm expecting that to last approximately an hour. I am expecting questions from the Commission of that witness, and then I would like to have a very brief break where I can come back and ask any remaining questions of my witnesses and make a Closing Statement. I did want to identify

that would be another half an hour that I could anticipate.

HEARING OFFICER ORTH: All right.

I'm wondering if perhaps we should break then until 12:45, that's a little less than 30 minutes, and then come back. It sounds as though we have some substantial testimony to look at.

Okay. Let's come back from lunch at 12:45. Thank you.

(The Evidentiary Hearing recessed from 12:17 p.m. to 12:52 p.m.)

HEARING OFFICER ORTH: Let's come back from a lunch break that was too short.

We have Ms. Becker at the podium, and I believe we're going to hear from Ms. White next.

Please go ahead.

MS. BECKER: That is correct. I asked the witness, who I am going to refer to consistently as "Director Riseley-White," to the stand.

HANNAH RISELEY-WHITE,
after having been first called,
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BECKER:

Q. When you're ready, please do state your name and spell it for the record.

A. Okay. My name is Hannah Riseley-White; H-A-N-N-A-H, last name R-I-S-E-L-E-Y hyphen White, W-H-I-T-E.

(NMISC Exhibit 29 Was Received in Evidence.)

Q. BY MS. BECKER: Let's begin with your qualifications:

Is your Résumé contained in Exhibit 29, Director Riseley-White?

A. Yes, it is.

Q. Okay. Does it accurately reflect your education and work experience?

A. Yes, it does.

Q. And did you prefile Written Testimony on October 1st with the Commission?

A. Yes, I did.
Q. And do you affirm that Testimony today?
A. I do.
Q. I can tell you that what I learned about you in preparing for this hearing is that you have a real grass-roots, ground-up approach. Would you tell us a little bit more about your history and your work experience?
A. Yes. And I just want to say thank you all for your attention given the very end of this hearing; it is a really important conversation.

In answer to your question, Ms. Becker, my professional career started as a community organizer in New York City, and I think what that experience taught me is that if you don't have input and buy-in from the community, you don't have successful outcomes. And that's a thread that I've carried through all of my professional experience.
Q. How long have you worked at the

Interstate Stream Commission?

A. I have worked at the Interstate Stream Commission for just over 11 years.

Q. And for the last five, have you been Deputy and Director?

A. That is correct.

Q. Okay.

According to your Testimony, it covers the New Mexico Interstate Stream Commission's mission and planning mandate. I would like you to highlight for the Commission your role and perspective on the heels of Mr. Chakeres' Testimony of the OSE.

A. Yes, thank you.

So as this Commission knows, the Interstate Stream Commission has broad statutory authorities to investigate, conserve, develop, and protect New Mexico's waters. We have a mission to support the State in complying with our Interstate Compacts, and very importantly and related to this hearing, we have a role in

implementing state and Regional Water Planning in New Mexico.

Q. How would you describe your work relationship with the Office of the State Engineer?

A. Interstate Stream Commission works incredibly closely with the Office of the State Engineer. It's been clear from the Comment and discussion over the last 2 days how important our work is with regard to coordination of Water Rights Administration efforts, which is the duty of the Office of the State Engineer.

That collaboration and communication is a critical component of our work, and I don't think that we are able to succeed in meeting the challenges facing New Mexico related to water scarcity without a very close relationship with Office of the State Engineer and, honestly, the other natural resource agencies that work on water.

Q. Does the State Engineer report monthly to the Commission?
A. Yes, she does.
Q. And do you report monthly to the Commission?
A. Yes, I do.
Q. And what is it you're reporting on?
A. I report on hydrologic status of the state, and also updates from all of the work that we conduct in our various groups in the Interstate Stream Commission. As you all know, we are organized by river basin, but we also have a Planning Group and an Acequia Bureau.
Q. And as it relates to the Water Security Planning Act and the hydrologic conditions, how would you briefly describe the State of New Mexico?
A. I would say, you know, clearly, we are in a period of prolonged drought. But maybe more importantly than that, I would like to recognize that I am

testifying in front of you today on the heels of 2 previous Directors of the Interstate Stream Commission, Mr. Bill Miller and Mr. Norm Gaume.

I very much would like to echo the sense of urgency that you heard from both of them. I think that the Leap Ahead report, which has been discussed a lot in this hearing, was a wake-up call for us in New Mexico in terms of the very ignificant challenges that we are facing, and will continue to face, as climate change impacts our water resources. It is imperative that we take this moment to respond to those challenges that we are already seeing on the ground and prepare for the future.

And I would like to just take a moment, and it occurred to me this morning to share something very briefly that's personal, which is that my daughter turned six on Monday of this week, and I feel very blessed that I got to have a child late in life.

I think that part of what drives me in this work is a deep care for New Mexico and for our state, and a recognition that water touches on everything that we do. And also a concern for the future that we're leaving for next generations.

And so I think that this assignment that's in front of us right now is absolutely critical in laying the groundwork for what's coming for New Mexico to respond to the challenges of climate change.

Q. Thank you.

That was a lot about mission, vision, and the reality of the situation. Tie that into Regional Planning. Why is it so important that the Commission consider Regional Planning now?

A. I would just say again what I just said. I cannot -- but I'll elaborate. I cannot emphasize how important I think this particular assignment is for this Commission. The

last Regional Water Planning Statute, as you know, passed in 1987, so we're coming on almost 40 years.

I think that the decisions that you all make related to this Rule and the other actions that come in implementing Water Security Planning Act have the potential to be in place for decades to come and have the potential to affect every single New Mexican. I believe Regional Water Planning, if done right, is potentially the most powerful tool that we have in New Mexico in implementing actions that can help support our communities in responding to these challenges.

So I think I appreciate greatly, and I'll echo Mr. Norm Gaume and other Comments in terms of the questions from this Commission. I really appreciated how thoughtful and intelligent you are in coming at this issue.

And then I also would just emphasize that what's in front of you

right now is the Rule. The Statute called on us to craft both a Rule and guidelines, and I think one of the challenges that we've had as Staff, and that I anticipate that you will have as a Commission, is determining what needs to land in Rules and what needs to land in guidelines.

And again the intent of having those 2 separate pieces was that the Rule would be much more solid and permanent and binding, but that the guidelines, and also the very important Tools and Templates that you have heard about, would help us learn and iterate and respond to the Regions as we implement the planning process ahead. So I encourage you all to think about that question of what lands where.

Q. As we work through this, I want to go first a step back before we go forward, and that was that I believe you were familiar with the testimony of Mr. Erdmann, that the 1987 Act was, in fact, replaced by the Water Planning

Security Act. Is that right?
A. Correct.
Q. Okay. And were you at the New Mexico Interstate Stream Commission when the State Water Act was passed?
A. No.
Q. No. Okay.
Were you involved in the lobbying efforts for the Water Security Planning Act itself?
A. Yes.
Q. And could you describe your role?
A. Sure.
I would say the inception of the Act really came from the Water Policy and Infrastructure Task Force that Mike Hammond convened with Governor authorization in 2022. That task force, which included many of you all here, recommended strongly a revision to the Statute. And so coming out of that task force work at the end of 2022, there was an effort to bring a Statute revision in 2023. I supported that effort together with

then Director Schmidt-Petersen and State Engineer Hammond in carrying that as a State agency Bill at the Legislature that year.

Q. And I'm hearing a number of words. I'm hearing there was the replacement, but that there was robust public participation, and that there was revisiting. I hear you say "reimagining" in your Direct Testimony. Can you describe why is it a reimagination?

A. Well, again, I think that the passage of the 2023 Water Security Planning Act really provided us all -- and I mean the big "we" -- an incredible opportunity to reimagine what this planning process looks like, to better meet the needs of our communities, and respond to the challenges of increasing water scarcity.

Q. And the duty, despite the big "we" you just articulated, the duty is on the Interstate Stream Commission to propose a Rule to this Commission for

approval. Is that correct?
A. That is correct. And I think in implementing that duty, as you mentioned earlier, our very first step was to engage the public and the Tribes, Pueblos, and Nations what this needed to look like. We did not feel like we just wanted to have the Statute pass and then craft a Rule and be done with it. We wanted to really include robust input into what that Rule needed to look like, which is what we've done since then.
Q. We heard in the Testimony of Ms. Fox about the open house approach. Did you participate in any Open Houses?
A. I did. I attended the Open Houses in Roswell, Albuquerque, and Santa Fe.
Q. And did you have a role with the water Planning Program Staff to really cultivate how to plan for the plan?
A. Absolutely.
Q. Did you review the Discussion Draft and guidelines as those were

circulated?
A. Yes, I did.
Q. And did you review the Public Comments that were made on the Discussion Draft and guidelines?
A. Yes, I did.
Q. And did you then also have a role in drafting the Proposed Rule that's been Petitioned before the Commission?
A. Yes, I did. I conferred with Staff based on the Comments received, and we worked together to craft the Proposed Rule.
Q. And in your testimony, you highlight three factors of reimagining the Proposed Rule. Would you briefly touch on those?
A. Yeah. I mean, I think, again, the vision in this process from me and from Staff is to have this Rule and implementation of the Act, so including everything that comes, really, truly support communities across New Mexico in responding to water resource management challenges. And to support

solutions that have local buy-in and are likely to be implemented successfully, and then to ensure and track successful outcomes on the ground and report on those outcomes.

Q. So knowing who you are and what the agency does and what you have been charged with, how does the Proposed Rule critically differ from prior planning efforts?

A. Thank you.

My Direct Testimony speaks to four particular distinctions between this and previous efforts. I'm sure there is others as well.

But I think the first, and this has come up quite a bit in the Comments and questions over the last 2 days, had to be -- had to do with striking the right balance between a state-driven and a locally driven process.

As you all have heard, I think the first round of Regional Water Planning in New Mexico was very much

considered bottom-up, and the second round of plans was very much considered top-down. I think we have learned a lot from both of those processes.

The goal that we're trying to strike here is having the State create the right framework, through the Rule and guidelines, and then the right sort of robust support through Tools, Templates, and other mechanisms, to support communities in doing a planning process that's really locally driven in terms of values, particular solutions that are recommended, and what's needed on the ground in those Regions.

That's one -- "one" -- distinction. It's trying to strike the right balance.

The second is that what we're trying to achieve here is really outcome-driven. One of the main criticisms of previous rounds of Regional Water Planning was that plans weren't implemented. The whole refrain

of, "They sit on the shelf." We spent a lot of time in crafting this Proposed Rule and the other pieces that are coming, thinking about how do we make sure that these plans are supported, and what does that look like?

And so part of that has to do with ensuring that there is local ability to lead implementation -- that is why you see the requirements for PPPs to have a local sponsor -- but also locally-driven procedures.

There has been quite a bit of discussion in the last few days about the absence in the Rule of, like, the procedure to define Public Welfare, or the procedure to rank PPPs, or what does the voting mechanism look like. You heard Mr. Kaufman from Sandia talk about weighted voting.

We opted in this Proposed Rule to not pin down those procedures, but rather to craft really robust and significant guidance for Regions to

guide those procedures themselves.

One of the questions that I would pose to you all as you grapple with this particular "is it in the Rule or is it not," is if you pin down those procedures without ever having practiced implementing them in a Rule that could be here for decades, what are the implications of that? So if there were a lot of procedures in the '87 Statute and we were still having to follow those, would they be effective, or is it better to implement and learn as we go through guidelines and other tools?

Then the other outcome-driven piece of this Proposed Rule is, you know, the Statute requires Interstate Stream Commission to report annually to the Legislature on both the planning process, but also the outcomes from the Regions in terms of priorities for funding.

I think the intent behind that was to be able to really highlight

what are the things that need implementation, so outcome-driven. How do we make sure that these things are getting sufficient funding?

The third thing that I would say is distinct is public input in general. When the '87 Statute passed, I don't think the State spent 2 years collecting input on what implementation of the Statute should look like. That is what we've done here, collected input not only on the Proposed Rule, but also on the guidelines, tools, and templates. We're very much focused on getting input on how implementing this Act needs to look.

And then I think that the Rule itself requires significant public and Tribal input in the crafting the plans themselves. So really a commitment to ensuring public input.

The last distinction is the robust state support, and that includes the Tools and Templates. I want to emphasize, we have a ton under

development that I think will be helpful.

We don't anticipate stopping; we anticipate building on those tools. Again, learning as Regions actually use those tools to help inform their process and improve the tools as we go, and then continue to build on them into the future.

I also just think it's really important and part of those tools to emphasize -- and this has come up a fair bit in the last two days -- is I think it will be absolutely critical for as Councils are convening, for them to have very well-formulated information about the hydrologic reality that they are planning around.

What is the science? That is not just water use by categories, it's all of the science that's out there that will be gathered through some of our tools and template efforts and otherwise, but also what is the administrative reality they need to

plan around.

This came up in discussion yesterday with Mr. Chakeres. I think it's going to be really important for Regions to understand both what is the future potential hydrology look like, but also in absence of planning, what are the administrative actions that the State will take and what are the potential implications of those.

Q. Thank you. That really fleshed out the Written Testimony you had.

I wanted to just direct the Commission that the Testimony is located at Bates stamp 51 through 53.

As I was looking at that while you were talking, under your fourth bullet there, "Robust State Support," you identify in your Testimony that the guidelines will establish a Grant program that can be used by Regional Councils to fund planning activities. Would you expand on that a little more?

A. Sure. I think there has been quite a bit of discussion in the last

two days also about funding for planning itself and planning activities, but also plan implementation, and I would like to distinguish between the 2 of those.

The Statute calls on us to craft guidelines that will establish a funding mechanism for Regions. I think we not only want to provide very robust sort of State support tools in terms of the science, like I just mentioned, but also organizational principles, outreach resources, et cetera.

We also want to provide for Regions to apply for funding to do those things themselves, take on particular studies that they are interested in.

And really long-term, the idea with the ongoing planning period is that Regions would be very autonomous, and so self-sufficient in that they would have the ability to run on their own with, as needed, State support through that funding process.

We have important work ahead of us on the heels of this Proposed Rule in developing all of the things in the guidelines, not just related to funding. But that funding mechanism would be in the guidelines and I think would fund, just to be clear, planning activities, and how we interpret that could be pretty broad.

I don't see us funding actual capital projects. I think there is a lot of funding mechanisms in the State Water Trust Board, et cetera. I see us more as playing a navigator role, but obviously that could change. We want to make sure that we are there to help support Councils in leveraging and sponsors of PPPs in leveraging the funding that they will need to actually implement the projects.

As you all have highlighted, the planning process itself will take resources. Hopefully we will be successful in leveraging resources from the Legislature such that we can

provide that funding to Regions through the Grant and Loan program outlined by the Statute and called for in the Guidelines.

Q. And just so it's clear, the funding that you're talking about would be a funding program that would come through the Guidelines; correct?

A. Correct.

Q. And then it would be funding that is both available for Councils to access information, studies, and what you just explained. But in addition, would it be potentially for facilitation --

A. Oh yes.

Q. -- and to help convene?

A. Yeah, I didn't mean to limit it in any way.

I think it could be for data studies of anything that could inform the planning process. It could be facilitation, organizational support, report writing. It could be community outreach resources or water education

resources. Any of those things and probably many of other things would support the planning activities in the Region and would be available for funding through the Guidelines as we envision it. But the Guidelines will ultimately be up to you all as a Commission as well.

Q. So it's clear, that funding is to the Councils and it's separate from the Tools and Templates and all the resources that the Proposed Rule articulates is on the NMISC Staff. Is that right?

A. That's correct. We intend to provide robust support for the Regions, but also the ability for them to access funding to drive their own process in ways that are meaningful to them, or beyond what we are able to provide.

Q. Great. We'll touch more on those Tools and Templates in a minute, but I would first like to follow up on your Testimony on statewide objectives.

You were here for the

Testimony of Mr. Chakeres; correct?
A. Yes.
Q. And is it your understanding that the 2 of you are in synch on the interpretation of Public Welfare as it is proposed in the Proposed Rule?
A. Yes.
Q. And how do you describe the relationship of statewide objectives and Public Welfare?
A. I think the statewide objectives, as articulated in the Proposed Rule, are a component of Public Welfare, but Public Welfare is not limited to those items.

I appreciated the Comment from Commissioner Carrasco, I think, yesterday. Our hope is that these plans will not only be in compliance with those statewide objectives, but further them; right?

Ideally the plans and the implementation of the plans help support and enhance the State's ability to meet those statewide objectives, but

certainly the plans can't be in contradiction to those statewide objectives.

I think what's interesting and exciting about the Proposed Rule and the testimony from Mr. Chakeres yesterday is this opening that's coming from the State for Regions to also articulate what Public Welfare means to them so that that can be used in informing planning decisions and planning priorities, but then also used by the Office of the State Engineer as they evaluate Water Rights Permitting Applications.

Q. What must a plan, submitted to the Commission, show in order to be approved as it relates to statewide objectives in the Proposed Rule?

A. I would just say that the plan needs to show that the proposed actions in the plan are at least in compliance, if not in furtherance of those statewide objectives.

Q. And I think it's clear for the

record, but I just want to articulate that you mean compliance with compacts?

A. Endangered Species Act or other requirements related to threatened or endangered species. Supporting large Water Settlements, which could include Indian Water Rights Settlements, and also in support of active Water Resource Management initiatives.

Q. And is compliance language one of the added considerations that NMISC Staff, including yourself, sought to have the Commission approve in Section 14?

A. Yes.

Q. And that came after the Public Comment period closed, but it's included in your written Direct Testimony is it not?

A. That's correct.

Q. Okay. Where did that Comment come from?

A. I believe that main Comment came from the Water Security Tribal Advisory Council.

Q. How do you make sense of compliance language with implementation language?

A. I'm not sure I understand your question.

Q. I'm trying to expand on the different components with compliance with and implementation of. I think you may have addressed by saying "in furtherance of," but is compliance the minimum?

A. Certainly compliance is the minimum. I think that it would be strange when it comes in particular and given the Comment from Water Security Tribal Advisory Council. For the most part Indian Water Rights Settlements involve a wide range of water users related to the Tribes involved.

I think all of those parties will likely be represented in the Councils, and it will be in all of their interests to support implementation of those Settlements through the planning process.

Q. Let's look at what you have titled in your Direct Testimony: "The Unique Role of the Water Security Tribal Advisory Council." What has your involvement with what I'm going to refer to it now as "WSTAC"?

A. When the Statute passed in 2023, I then worked together with the Governor's Office, the Office of the State Engineer, and New Mexico Indian Affairs Department to develop a process to convene that Council.

Q. Do you envision the work of WSTAC to be carried out through the initial planning period and the ongoing planning period?

A. Yes.

I think that Council is very valuable. I hope that it becomes a permanent Council to engage in these efforts long term, and we are committed to support that.

Q. How do you show commitment and

what goes along with saying you're committed?

A. (No audible response.)

Q. In other words, what are you prepared to do?

A. At this point we've funded the convening and facilitation of that Council. We anticipate continuing to do that.

Q. In your testimony on page 6, which is Bates stamp 54, you identify that:

> "NMISC Staff are working to develop resources and build Tools and Templates on an expansive array of topics, including laws, agreements, Treaty rights, and methods of collaboration and informed decisionmaking."

Does that include making certain that Councils are familiar with federally recognized or reserved Tribal Water Rights?

A. Yes.

Q. And just the last question in this area.

Is it the role and duty of the New Mexico Interstate Stream Commission Staff to support Councils with the considerations and criteria that's required of them, including everything related to federally recognized or reserved Tribal Water Rights?

A. Yes.

Q. I ask that because I just want to be clear:

Sometimes the role of WSTAC versus the role of the New Mexico Interstate Stream Commission, there is 2 opportunities there: One is a duty; and, one is an opportunity.

Would you say I characterized that correctly?

A. I believe so, yes.

Q. Okay.

Now I'm going to turn in your Direct Testimony to the criticisms of the Proposed Rule and process. Admittedly there is a number, but you

categorically put them into 3 categories. I'd like you to touch on how you heard those criticisms and how you responded to them.

A. Thank you.

I would just start by saying I really appreciate the engagement that we've had in the Open Houses, on the Discussion Draft, and on the Proposed Rule. It takes time and effort, much of it in a volunteer capacity, to weigh in on this. I think that shows that New Mexicans care and are concerned about water.

There is no Proposed Rule that will meet everyone's expectations, so there is a lot for you all to weigh. I personally love a public process that's messy with a lot of opinions, and I think, you know, we've opened the doors to all of that, which I think is great.

I chose in my Direct Testimony to summarize some Comments on some of the main themes that we heard in the

criticisms, and those were, number 1, the size of the Councils:

There has been a fair amount of concern about these Councils being really large. Like, if you look at the list of who would get an invitation, it may be overly cumbersome and make it difficult for Councils to plan effectively.

There's also been criticism that more people should be included, so it's interesting when you have criticisms on both sides; right?

I think our take on it was that it was critically important to extend invitations. Whether those entities choose to participate, obviously, will be up to them because it is a volunteer Council, but extend invitations to all of the potential parties that could be affected by the planning process.

It also felt important to extend invitations to those Representative Members as the most

likely candidates for actually implementing these plans. Having those folks at the table felt really important.

Then I think that through the Tools and Templates, you know, we will be providing guidance and options as to organizational principles. You invite everyone, but then you provide good support in terms of how to run that process such that you're not bogged down.

That will also include options for steering committees, working groups, subcommittees so that those Councils can be efficient in making decisions, while also having the full reach of inviting all of the communities in those Regions.

Q. Excellent.

You also identified boundaries as an area of criticism. Please expand.

A. As you know there's lots of opinions about boundaries and how to organize. In the Open Houses we had

options presented that looked at either sort of hydrologically-based boundaries or administrative boundaries.

We ended up crafting this proposal, obviously, based on the robust input that we heard and a lot of interest in planning around shared water supplies.

I think there has been also criticism about these Regions being bigger. You know, with what we are proposing, we'd be going from 16 Regions to 9 Regions.

I understand, and I've heard in the last couple of days Comments about the challenges of what those larger Regions might present, particularly if they include a range of interests, a range of water user types, cities versus ag.

My inclination is, and I think a lot of how we're looking at our work at the State in general is that we need to be thinking about our water very holistically. If you break into a lot

of small Regions that have similar interests, it might be easier for them to plan, but it's not forcing us to think about the challenges of the broader areas that we're dealing with, so in my mind it makes sense to have these larger Regions.

I also think if you have more smaller Regions, each of those Regions then has to have the capacity to mount up to do this planning process and that could be burdensome.

I think that it will be impossible for the delineation of the Regions to capture, you know, every Indian Water Rights Settlement boundary or every COG boundary, so I think we're trying to strike the right balance here.

I would also say, and I don't know if this is the right place for this, but I think that through this whole process we spent a lot of time thinking about how the implementation of this Act will build local capacity. I would really encourage you all to

have that front and center in your mind as you're thinking about the Rule and the Guidelines. How do we use this to build local capacity?

Then last, if you have a lot of small Regions, they are also more likely to be competing with each other for resources, and so to the extent that there are these larger Regions, that was what made sense to us.

And then I would also say we appreciated the feedback we heard that led to us creating the opportunity for Subregions, and I think that we didn't pin down the specificity of what composition of a Subregion, because we wanted to provide for a range of potential shared interests that could be grouped in a Subregion and still be able to get support and resources for that planning process at a Subregion level, but with the need to integrate those recommendations within the larger Region.

Q. I recognize, Director Riseley-

White, that you're trying to stay within your written Direct Testimony. However, after the questions of the Commission is it your plan to identify additional changes that you would like to see and may make changes to the Subregion section?

A. That is correct.

The discussion over the last 2 days, and the questions from this Commission, have been incredibly helpful, and we will be proposing some further revisions to the Proposed Rule today.

Q. Great.

There was a third criticism that you did identify in your Testimony, and it had to do with Self-Convening Councils. Can you talk about that?

A. Yeah.

I think you heard from Mr. Gaume that there is concern about too much State control in the convening of Councils.

The Proposed Rule provides for

Councils to self-convene. The check that the State has is to make sure that all of the right representation is on those Councils, and it is important to us to have successful outcomes.

I believe if a Region was self-convened, but self-convened by specific interests, and that specific interest was who was initially convening, you're not going to have great participation because there is going to be an assumption that the process may be biased.

It felt very important to us that the check from ISC Staff was really just to ensure appropriate representation on the Council, to have a substantive planning process with all of the interests involved.

We will certainly support, as best we can, Self-Convening Councils. As you know, there has been discussion, too, about the phasing of convening of Regions. That's not in the Proposed Rule, that's based on our expectations

of resources.

To the extent, and to Vice Chair Timmons' question the other day, we have additional resources for additional Staff and contractors, and there is interest in moving more quickly. Certainly, that's something we can do.

Q. Do you have the Proposed Rule in front of you, Director?

A. I do.

Q. If you would turn -- I just want to make sure about this as we talk about it, and we can actually point to it. I'll ask you to look at Section 10, Paragraph C.

A. Yes.

Q. Is that the mechanism for Councils to self-convene?

A. Yes. Thank you.

Q. Okay.

The next section of your Testimony is:

"Opportunity to Plan Comprehensively and

Collaboratively."

Why is the New Mexico Interstate Stream Commission going to propose Guidelines after the Rule is effective and is that something that the Commission can expect?

A. Yes, you can definitely expect Guidelines.

I think we issued -- well first I would say that we did issue the Discussion Draft Rule and Guidelines in January as a package because we looked at this as a comprehensive effort. It's hard in a lot of ways for me to just look at the Rule without thinking about the Guidelines; however it made sense sequentially for the Commission to finalize a Rule so that we knew what would land in that Rule before turning back to the Guidelines, looking at the feedback we've received on those, the Comment, including through this hearing, to inform those Guidelines.

And those Guidelines would

address a number of very important things, not only the funding mechanism that I talked about earlier, which is it absolutely critical.

Also State Agency engagement, that came up quite a bit today, and I want to thank my colleagues at the Energy, Minerals, and Natural Resources Department for their Comments.

The Act calls on the Guidelines to speak to State Agency collaboration in the planning process. I would love to see every Planning Council have an advisory committee of State Agency representatives and the expertise they bring not only from Energy, Minerals, and Natural Resources Department, but you heard Mr. Chakeres yesterday talk about every Council should have someone from the Office of the State Engineer to inform them on Water Rights and Water Rights considerations.

Department of Game and Fish, New Mexico Environment Department,

their role in what this planning process looks like will be determined in the Guidelines in response to that requirement under the Act.

And then also the Act calls on the Guidelines to develop reporting metrics for PPPs, and I think that will be important in tracking outcomes, leveraging resources, and reflecting on what's working and what's not working in the planning process.

There's other things called out in the Guidelines. Also, of course, the Guidelines can include things that are not called out in the Act.

Q. By reference I'm looking at your Testimony on page 57. There are 5 bullets there, and at a minimum you plan to address in the Guidelines those 5 bullets. Is that correct?

A. Correct.

Q. When I said "expect," what's a reasonable expectation, based on the effectiveness of this Rule, that the

Commission can expect? How soon will you be back to seek adoption of Commission Guidelines?

A. It depends on how soon the Rule is finalized, and, obviously, that decision is in your court.

I think our hope has been to have Guidelines finalized by the first quarter of next year, because I think we're anxious to convene the Regions.

Again, the Guidelines are easier to modify, it just takes an action of the Commission so we can implement those and then sort of iterate and learn and come back to you all, but it will depend on guidance from the Commission and progress in finalizing the Rule.

And you know, we anticipate engaging all of the public, Tribes, Pueblos, and Nations, et cetera, on those Guidelines as well.

Q. In the universe of information available to Councils in the Proposed Rule, you've talked about Guidelines

that are forthcoming. We are going to delve into Tools and Templates, but in your Testimony, you also identify an "Advisory Roundtable." Please describe.

A. Yes.

I think, not unlike Mr. Gaume's suggestion of bringing experts together to help inform this process, our plan, and I think this was in Mr. Erdmann's Testimony as well, is to convene what we're calling an Advisory Roundtable of water experts and leaders from across the State to help shape and inform the Guidelines and the Tools and Templates, and to stay with us in forming and guiding and providing their wisdom and insight through that initial planning period.

We see that group as being really critical in helping us shape what's next, and having sufficient expertise at the table, and being able to have a broader group to work with on all those next pieces.

Q. So that I follow along with

timelines, once the Guidelines are done and they are in effect, that work is completed. Is that correct?

A. Correct.

Q. The Tools and Templates, do you envision that work as ongoing?

A. Yes.

Q. And the timing of the Advisory Roundtable, please describe where that fits in the timeline.

A. I think we were, in some ways, anxious to convene this Roundtable like 6 months ago, but then we realized that might be problematic in a Rulemaking process.

I think our intent, when the Rule is finalized, is to convene that Advisory Roundtable to help shape the next pieces.

Q. Mr. Erdmann did give Testimony, and I don't want to duplicate that regarding the Tools and Templates, but I would ask you to speak to the Commission about that which you're most excited about of these Tools and

Templates coming and why you think they are useful and reliable information for these Councils.

A. Thank you.

I want to say even though I said Tools and Templates are ongoing, we are working hard to get sort of the core body of those ready for those first Regions as they convene, but they are ongoing, as in we will continue to improve those Tools and Templates that are called out in Mr. Erdmann and my Testimony, and we'll continue to build and develop additional Tools and Templates.

I would say as a person with a technical background, it's really hard to pick what I'm most excited about, but I'm really excited about the components of the Tools and Templates that will help provide the scientific foundation for the Planning Regions, so that includes the map-based Dashboard.

What's amazing about

technology these days, and map-based interfaces, is you can keep adding new information to them. We can collect all different kinds of data, and this will involve a lot of coordination also, and support with the Water Data Initiative and that effort to provide geo-referenced information for the Planning Region.

I also think the work that's happening at New Mexico Tech related to aquifer mapping, the 2-D mapping and the aquifer summary sheets, is going to be a critical component of preparing Regions to plan.

I would also call out the organizational principles, because I think that piece, in terms of how Councils make decisions, how they rank PPPs or develop their procedure to rank PPPs, all of that is going to be very important to ensure a productive planning process.

Q. I trust you heard the Testimony of Ms. Fox talking about science as

constantly evolving. To the criticism that science should be identified here in this proceeding, could you expand on the science that you just identified, and the mapping Dashboard and the aquifer mapping, and why that's important that it not be defined in this process, but relied upon in the Tools and Templates that the NMISC is going to continue to provide?

A. I would say the discussion in the last few days has been really interesting to me in terms of should this Rule pin down a technical methodology or a technical platform. I think that warrants further consideration of this Commission.

I think our concern had been, you know, the criticism of the common technical platform used in the last round of Regional Plans, is in order to have consistency, it utilized data that wasn't the greatest resolution depending on which Region you were in. So I spent a lot of time thinking about

what is the State's role in providing robust scientific information and ensuring scientific integrity in the planning process, which is what the Act calls on us to do.

I don't know that means in the Rule we need to say, "This is the Template that we're going to use." I do think it's incumbent on the State to pursue and collect, or present and pursue the best available science to inform the Planning Regions.

I think that's tricky because I think that needs to happen on 2 different levels:

We need to both have very technically solid scientific information with all the available data sources not just from the State, but also be able to present that data to a lay audience in a way that's meaningful.

The presentation of scientific information needs to be accessible to individuals with a range of expertise. We're going to need to think through

what that looks like.

The Proposed Rule does say that the State will support the Regions in accessing the best available science and data. What that specifically looks like I think could be defined in the Guidelines or through the Tools and Templates.

Q. To the extent that's part of the bases for why the New Mexico Interstate Stream Commission supported a rollout that you say is not in the Rule, but builds on itself and advises the Advisory Roundtable, is it advantageous for you to not define and certainly not all at once?

A. Again I would just that this is the challenge of their assignment; right? What needs to get pinned down in this Rule now with the idea that it will be solid and long term, and what needs to be developed and iterated and improved on over time.

There was an interesting Comment from Commissioner García today

about maybe the Rule needs to do a better job of pointing to those other pieces to the Guidelines, but I don't know and we don't have a proposal as to what that might look like, but I think that warrants consideration.

Q. How will you determine if the Rule is successful?

A. Fundamentally the Rule will be successful if we see communities increase their ability to respond to water resource challenges on the ground or have an impact on the ground. I think the way that happens and the success of the Rule requires broad engagement.

You know, the campaign, which I haven't talked about yet, but I think the Main Stream campaign has been hugely successful in broadening our communication about water with a much wider audience.

When Mr. Erdmann started at the Planning Program I think we had an email list that was likely the same

email list that we had for a decade. We see a great need to engage a much broader audience, and to educate New Mexicans about water and the importance of water in their communities.

On that piece there is a very important tie to implementation of the 50-year Water Action Plan. We at the Office of the State Engineer and Interstate Stream Commission are playing a leading role in implementing Action A1, which has to do with water education. It calls on us to implement Water Security Planning Act, but also calls on us to develop better and more extensive public engagement related to general public awareness of water issues, as well as K through 12 water education and water workforce development, so that's part of what we are moving in our shop as well.

So success: Outcomes on the ground;

Much broader engagement; and,

Better education statewide

related to water issues.
Q. One follow-up on that Main Stream campaign, is that considered one of the Tools and Templates?
A. Yes.
Q. Is that something that will be ongoing?
A. Yes.
Q. And will it, in fact, serve as a repository for information?
A. Yes, we see that as ultimately a long-term information hub where people can come to access data, information, or get a navigator service linked to Water Data Initiative, and also understanding what action they can take to get involved.
Q. Director Riseley-White, did you review the 75 Comments that came in to the portal during the Public Comment period?
A. Yes.
Q. And you've been present for the duration of this hearing have you not?
A. Yes.

Q. I know that we've identified a few more changes that you, on behalf of the Interstate Stream Commission, would like to support. With those do you wholeheartedly support the Proposed Rule today as it's been Petitioned with the changes?

A. I do, and I also encourage you all and will echo what I said at the beginning of my Comments today:

I think the task in front of this Commission is a very important one. I encourage you all -- I know you're all very busy, but this hearing is a handoff to you all in terms of what this Rule needs to look like.

I feel incredibly grateful to work with excellent Staff at the Interstate Stream Commission, but I feel particularly grateful to work for such an amazing Commission with a range of expertise and experience to bear, and understanding of different water resource issues from across the State.

I'm very excited to see what

comes next from you all on this Proposed Rule, and then to work with you all on the Guidelines and furthering the Tools and Templates.

Q. Thank you.

With that, I note that the Petition was filed on July 17th. Your Testimony was filed October 1st, and it did include recommended changes to the Commission; correct?

A. Correct.

Q. Then in addition there are changes that you're seeking to provide to the Commission today after their questions of you that have come in from the Comments and questions they have had thus far. Is that correct?

A. Correct.

MS. BECKER: With that, then, Madam Hearing Officer, I have 2 matters:

I would like to make the witness available for questioning, and then at the close of that I would like to substitute the Public Comment that

was submitted by Dr. Wessely Tuesday with the correct Redline version, and I've got copies that I would like to provide.

In addition I would like to share a Redline strikeout version of changes by NMISC Staff that would be more than Director Riseley-White. I would also like to have both Mr. Erdmann and Ms. Fox available to walk through those and answer any questions of the Commission after that.

HEARING OFFICER ORTH: Thank you very much, Ms. Becker.

Let's start with Commissioner questions in the room then.

Commissioner Russell.

COMMISSIONER RUSSELL: Thank you.

EXAMINATION

BY COMMISSIONER RUSSELL:

Q. I just want to begin by expressing my genuine admiration for how much work has gone into this and how thoughtful it has been. I think

the outreach and solicitation of public input has really been remarkable.

I certainly think that Main Stream will be an important tool for continuing to engage the public, and my praise goes to all other Staff that have worked with you on this.

I did have a couple of concerns that I just wanted to follow up on, and the major one right now is the question of boundaries:

In the case of the Southwest Planning Region, there is a remarkable coincidence with the AWSA boundaries. It also happens to overlap with the COG boundaries in the same area and I think that's terrific.

At the same time there is quite a bit of diversity in terms of the types of water available and the kinds of uses.

Grant County has 4 municipalities and 3 big lines.

Luna County has very little Surface Water, a lot of Groundwater, a

large amount of agriculture. It has some serious issues with balancing water going in and water coming out.

Catron County has no municipalities. I mean they have people living in little aggregations, but they have a lot of, you know, livestock, you know, and recreational, economic activities.

Hidalgo is a little bit of a hybrid between all of those 3. You know, they have a little piece of the Gila River with good farming use. A lot of it is also kind of a closed basin situation, like the Mimbres Basin.

I think that there is an ability for people to come together and develop a common vision with maybe little parts, you know, pointing to the specific needs of those different areas and different counties, but my concern specifically addresses the question of prioritizing.

You know, if Catron County sees that half the people live in

municipalities -- and it's more than half the people. Most of the people in the Region live in municipalities. How is their input...

I mean are they going to get to be Number 2 or Number 3 on the list, or are they going to be like 17 or 24?

You know, I worked for the Town of Silver City, and we'd work with Planning Outreach and other groups, and that whole issue of sort of equity or equitableness is really a big one.

My question specifically is whether it is conceivable that in addition to clustering the rankings according to, you know, the readiness of the particular project, or the idea of planning the Readiness, is it possible that instead of going from 1 to 60, you might have buckets such that the hydrologic area of the San Francisco River, these are their priorities and their order of priorities; and for the Gila River, you know, dependent communities or

industries, these are their priorities, and they are not competing with the San Francisco priorities, et cetera? Luna County the same.

I don't know whether it's by county or by hydrologic unit or Groundwater or Surface Water, but my question is does everything have to be 1 through 60, or can you separate them into different buckets such that when they go out for soliciting funds, they can say, "Well we're the top priority in our particular area of need"?

A. Thank you for that question, Commissioner Russell.

I think the question of prioritization of PPPs is kind of the $100 million question in the room; right? I would say we have had a lot of Staff discussion and debate on this particular issue.

I think, you know, part of this, and I mentioned it, is the focus on implementation in the Act and in the Rule which requires some kind of

prioritization.

You know, the previous round of Regional Plans, and I was involved in those on the Pecos, included a rollup of like 500 PPPs with zero prioritization. I think the Legislature had no idea what to do with that, so they did nothing.

They were interested and excited about the idea of prioritized PPPs coming out of these plans. We have some proposed revisions that Ms. Becker mentioned earlier that are, in part, responsive to the maybe lack of clarity and how the Proposed Rule was worded related to those PPP lists, to better capture that intent that we will share later today, which includes sort of, as you said -- and I think it was clarified through the Comment -- those 2 distinct lists based on those Readiness categories; right?

Also the Proposed Rule provides for PPPs to point to other PPPs as maybe being important to move

in parallel. This came up some in our Commission meeting yesterday morning.

I think the task in front of us, because I share your concern in that if there is one list and it's just ranked. You may lose people because they don't think that their thing will ever make it to the top of the list.

I think the assignment for us is to strike that right balance of being able to reflect priorities; does the Proposed Rule, you know, have priorities within those 3 lists such that they can move? I think inevitably, you know, a Subregion could have their own list and that could be reflected in a plan.

Ultimately, the Rule says each Council has to create those 3 PPP lists, so there could be reference to a specific Subregions' list of priorities, but the plan for the Region would still have to have sort those 3 lists as we are presenting it.

Q. I think the 3 lists is a great

idea, but my question is more specifically beyond the 3 lists.

Is there a way to cluster the ranking so that, you know, people are not concerned about being at the very bottom of it?

I mean if you have that concern, then the smaller the Region, the better off you are because your concerns, you know, come to the top, and so there is that cross-pressure.

Is it conceivable to prioritize by saying "Very Important, Important; Medium Important; Less Important," rather than "1, 2, 3, 4, 5"?

A. I think my question back to you all is what happens if there's 50 very important projects? I don't know the answer your question ultimately. I think that we want to avoid a giant list with no prioritization.

Q. Yes.

A. We also want to avoid a situation where there is only 1 list, and

therefore smaller entities feel like, "Why should we participate in this process? We are never going to be at the top of the list."

COMMISSIONER RUSSELL: Thank you; you've understood my concern.

HEARING OFFICER ORTH: Thank you.

Commissioner García, do you have questions?

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you very much for your presentation today. I want to echo the appreciation for the work you and Staff have done in putting this together.

Especially after hearing all the Comments, I can see the challenge in trying to strike a balance in Policy and crafting something that has enough structure while also giving or defining some relevant decisionmaking within each of these Councils.

I think that's really

challenging considering the diversity of opinions that we have, which from what we've heard in the last couple of days, has been very diverse. I appreciate the challenge and the effort that went into coming up with this language.

I wanted to talk about PPPs as well. I know I was asking your colleague, Andrew Erdmann, yesterday, or a couple days ago about PPPs and the Readiness criteria, but it really has to do with an issue of equity.

Interestingly, Norm Gaume gave a Legislative history of this Statute. One thing that wasn't mentioned was that "equity" was stricken in the final hour.

You know, as someone who I think advocates for equity in different ways, I found it really interesting, what it took to get consensus, and I'm wondering why that word was such a lightning rod.

I think it would have been

better had it been left in because it would have, I think, given us a lever to use in the Rulemaking to say, "Okay. Is this equitable?"

I think the questions that Commissioner Russell asked are really about equity. When you have different population clusters and different capacities, how do these communities come together around projects?

When I read the Rule, as someone who participated in planning and comes from a rural, under-resourced county, and I was part of the Mora/San Miguel Weather Loop Planning Region, the way I read it is like, "Well, you better get your act together," you know?

Then you've got to come and fight for your project, and you're going to be outnumbered, you know, if you come from a place like I come from.

I think some thought has to be given not to prescribe the process, because I see how that would be

problematic. You don't want to define the procedure in the Rule, but you probably want to say there should be a procedure, and there should be some kind of organizing principles in the Rule, and I think Rules can do that.

Rules can make statements of principle without telling them what to do or how to do it. I think that we don't need "equity" to be in the Statute to try to make equity an explicit goal of the Rule and our efforts.

I think the Readiness criteria, the reason it rubs me in a certain way is that I have been an advocate for rural communities as a County Commissioner.

Also people know me as the Acequia person, and now I am the disaster person. I am the lady who shows up after the floods and disasters, and they think, "Oh, something really bad happened," you know, "because Paula's here?"

I think the issue is that with Readiness, it's usually the entities with the most capacity are always the most ready.

When I've advocated in whatever role I've had, it's:

"Do you have a shovel-ready project?

"Not yet, no. We need resources to get to the planning process, and then engineering design process, and then we'll be shovel-ready."

There is a double standard. When there is like a bright, shiny idea, suddenly tens of millions or hundreds of millions are like:

"Okay. Let's put it right there.

"Well do you guys have a shovel-ready project?

"Not necessarily."

And so for me, the Readiness criteria is usually used in a way to

knock people off.

When I saw the Readiness criteria, that's what I thought of. I think a lot of rural communities might be disadvantaged by the way it's framed here, and that if there is not...

I mean this is absent a set of principles about meeting a diversity of needs or needs in common. This should not be a food fight over who has more leverage, or whatever, in the Region. There should be a visioning process, or some kind of collective interest, or a "Problem" definition where there might be a problem that people have in common, such as the watershed or clean water; okay?

An example in my Region is we just got test results that there is heavy metals in our water that came from fire retardant. Is that an Acequia issue? Well it's on our crops.

You know, I grow garlic. I don't know if I want to eat that garlic now.

You know, is it a Mutual Domestic issue? Yeah, in a couple years it's going to seep into our aquifer. If we did a problem analysis we would be, like, "You know, that's a pretty big problem. What are we going to do?"

If everybody is just coming up with PPPs, that term just strikes me as such a reductionist term, because planning...

I didn't finish my planning school, but I studied to be a planner for a while. Planning is meant to be very engaging, very participatory, and bringing people together. I think by using a reductionist term like "PPP," it's creating that, "Huh, let's just jockey and see if I can get mine on the list and round up the votes." It becomes kind of transactional and not necessarily holistic.

And so that's kind of my take from an equity lens of PPP and Readiness. I think that the Rule could

be strengthened with some kind of a procedure, and not telling people what to do and how, but some statement of principles about balance of different types, and trying to achieve holistic projects as well that support multiple sectors, like watershed work or aquifer protection and things like that.

I also saw in the last round, when people were asked this in the PPPs, it became a laundry list. I see why people reacted that way, but it really wasn't useful. I think you know this, and everyone really understands that critique.

That was my first idea, and so I guess my question is, I mean, can you think...

You've given so much thought to this, and I understand why you did it this way, but is there another way that we could open that up a little bit and be less reductionist in how we're ranking and prioritizing PPPs?

A. Thank you, Commissioner García,

for that question. It highlights for me that further clarity is needed, and hopefully our proposed revisions today will help clarify on that PPP Readiness categories, which I think will be helpful.

Essentially the way we set this up, or the intent was to address exactly the problem that you're identifying. We wanted to avoid a scenario in which everything is ranked, and those things that are shovel-ready are the things that get funded.

The reason for the 3 distinct lists was to provide an opportunity for things that are in the idea stage that are not shovel-ready at all, that come potentially from communities that would have difficulty getting them shovel-ready, to allow them to have ranking up at the top of the list that is on par with the items that are shovel-ready.

Those 3 lists, and having each list ranked separately, provides an opportunity for things that are at an

idea stage to get prioritized instead of getting buried in the list.

The intent precisely of those 3 lists was to avoid consistently only prioritizing shovel-ready items. Then that list of idea-stage or scoping-stage provides an opportunity for the Council, or the State, to resource those ideas that need to get to the shovel-ready phase so that they can be implemented.

As far as the "PPP" terminology, I would just say we spent quite a bit of time trying to eliminate that terminology.

We did end up carrying it over, and I think the idea there was to make sure that people are not just thinking about projects, because I think what's going to help us tackle the challenges that we are facing, so that we aren't just focusing on infrastructure projects. I don't mean to say those won't be important, because they will be, but also programs that relate to

water conservation initiatives or Shortage Sharing initiatives also need to be considered.

To the extent there is another term that helps people think about not just projects, but Programs and Policies, certainly I think we would welcome that because we don't love "PPPs," but we felt it was important for people to realize that it could be any of those 3 types of solutions that would be advancing.

Q. Thank you. I appreciate that you've given that some thought.

I have another question about Public Welfare and future generations:

I noticed, as it was brought up -- and I'm still grappling with how to deal with this in the language -- in one of the Public Comments. I did not fully understand the Comment, but it raised a question in my mind about how the Statute identifies Public Welfare and future generations sort of together in the same phrase. The Rule,

I think, doesn't.

Is there or was there any thinking among Staff about whether they should be considered together or whether they are distinct concepts?

A. Thank you for the question.

Again, Public Welfare feels to me like a broad term. It should encompass those statewide objectives. It also should encompass consideration of the needs of future generations, but I think it could be more than that.

I'm not sure what that means, and we have some additional proposed revisions today that relate a little bit to this discussion, but the idea that Public Welfare could be broader than that I think is important.

Q. Thank you.

There was also a Comment about consideration of negative impacts when PPPs are analyzed. The Rule doesn't mention that, but should it or do you see that being addressed in the Guidelines?

A. (No audible response.)
Q. In other words, any thoughts about that? Because it seems like a reasonable suggestion to me.
A. I think in many ways what is required in terms of the considerations and documentation in the Proposed Rule would get at that or are there other implications in part of those required considerations.

To the extent the implications are related to Water Rights and Water Rights Administration, I just want to emphasize again that any PPP that has any requirement for action related to Water Rights would go through the process at the Office of the State Engineer to evaluate that, including implications for Public Welfare as outlined by those statewide objectives but also Impairment to other water users.
Q. Just on that note I wanted to clarify:

It was very helpful to have

Mr. Chakeres present yesterday on Public Welfare. What I understood was that nothing in this Rule makes a determination of Public Welfare, only the State Engineer can do that. Is that correct?

A. That is correct.

Q. Okay. The only thing that this Rule does is provide a structure for Regional Councils to identify Public Welfare Values and issues and concerns. It doesn't even require a Public Welfare Statement, it just seems very deferential to the Councils whether and how they approach that. Is that correct?

A. That is correct.

I would say in terms of requirements for the Office of the State Engineer, as Mr. Chakeres testified yesterday, any statement of Public Welfare from the Region won't be binding on the State Engineer. However, it may be very helpful in their consideration of how to handle various

Water Right Applications.

That said, in terms of a planning process, do I think investigating Public Welfare would be of value? Absolutely.

Do I think Regions should have to complete that before moving into a planning process? No, I think that could be problematic.

This came up in a lot of Comment and conversation in the last 2 days, including Testimony or Comment from Dr. Follingstad.

I think it will be very important to begin a planning process by understanding what the interests are at the table, or what everyone is trying to achieve; right? Even if you are not honing into a single or a grouped statement of Public Welfare, it is important to understand, and I think that is necessarily a beginning part of the planning process.

We had a concern about requiring it because, as Vice Chair

Timmons mentioned, if you have trouble coming up with that statement, you wouldn't want to be at a deadlock; right?

Q. Understood. Based on the difference of opinions you have heard across the State, it seems like different Regions will approach that differently.

I did have a...

I just lost my train of thought, but I wrote down "Phasing."

Sorry, I lost my train of thought on that.

I'm going to go ahead. I have one more, and then I'll pass it along:

I had noted today that the State Forester, Laura McCarthy, made some recommendations about considering wildfire risk and post-wildfire restoration.

In considering similar topics and adding it to the list of PPPs, and of course it says "not limited to," so

the list isn't limited to what's here, but would that be a consideration to add that?

I think in my experience in the last few years there's vast Regions of the State that have experienced wildfire and are in a post-fire flooding phase, and other areas of the State are very much at risk. If they haven't burned, they are going to burn eventually.

Would we want to include that and sort of maybe it helps to prompt Councils to consider wildfire risk? Because it's probably all going to burn.

A. Yes, and we do, in our proposed further revisions today, have something in response to Forester McCarthy's Comments, which were excellent and we really appreciate her engaging.

You will hear more about this later, but we were looking more at the "Considerations" section, Section 14.

As you all know, the requirements are "... shall consider..." in that section, so 14A, are out of the Statute.

In B there is:

"Consideration: May consider Groundwater strategies and needs."

Similarly we should be considering watershed health and source water protection, and that's where we are proposing to add something, but it may be worth also adding something to the list of PPPs.

Q. Thank you.

I just have one more question, and I appreciated something you said earlier about the technical information and data that Regions would get.

What do you envision as a data set in terms of like a starter kit? In Regional Councils coming together, what would be available to them if they started in a couple of

months let's say?

A. Thank you, Commissioner García.

I think part of the intent with the Tools and Templates was to invest early in working with New Mexico Tech on those Aquifer Summary sheets and the 2-D Aquifer Map because of how much New Mexico relies...

You heard in Comments that it is over 50% on Groundwater, and having a basic understanding from the get-go for those folks who rely on Groundwater about what's known and not known about those aquifers that they rely on is going to be absolutely critical.

I think similarly, you know, we'll work to prepare information related to Surface Water, Surface Water availability, and trends and forecasts, as we've seen in the Leap Ahead in terms of the potential availability of Surface Water looking into the future.

COMMISSIONER GARCÍA: Thank you very much.

HEARING OFFICER ORTH: Thank you.

Commissioner Chavez, questions?

COMMISSIONER CHAVEZ: I don't have a question, but Ms. Riseley-White, Director Riseley-White, I thank you for your Testimony and all your Staff's hard work. Thank you.

MS. RISELEY-WHITE: Thank you, Commissioner Chávez.

HEARING OFFICER ORTH: Next, Commissioner Carrasco.

COMMISSIONER CARRASCO: Yes, good afternoon. Again, without saying it, thank you for everything. I mean, New Mexico is a better place because of the work you and senior Staff do, and will be in the future a better place.

EXAMINATION

BY COMMISSIONER CARRASCO:

Q. I have struggled a little bit with this Rule in the way it's structured and a big kind of universal problem. Your Testimony this afternoon

helped when you kind of approached the difference between the development of this Rule and the development of the Guidelines, yet I still look at the Statute.

You know, the Statute, under 4C says, "The Commission shall," and under (1) it says, "promulgate Rules," which is this process.

Under (2) it says, "adopt Guidelines."

But then there is (3) through (9), which seem to somehow disappear in this process, and I am not sure where they are going to show up. They kind of get incorporated in some of these parts of the Rule, but I'm not sure exactly where.

A. Thank you, Commissioner Carrasco.

First of all, having not been intensively involved in a crafting of a Statute, and then watching how the Statutes get revised as they move through a Legislative session, I now

have much greater understanding for the other Statutes we are tasked with implementing. I often think, "How did this end up this way?"

The water Policy and Infrastructure Task Force made this recommendation, and things moved quickly to get a Draft Statute together. It was then revised and iterated on during a Legislative session. There were edits to it at the 11th hour on the House floor, and I think that was the removal of "equity," so yes, there were things.

Your Comment that you started with where you are sort of struggling with how to organize the Rule, we have struggled with this, too, I think in terms of those other pieces.

I should also say some of the items called for under "Guidelines," based on the feedback we received from the Discussion Draft, we moved into Rules, particularly the public input requirements. It felt like those were

important enough that they should be solidified in the Rule.

Then, as I said earlier, there could be things in the Guidelines beyond what's called out specifically in the Act.

When you look at these remaining items, we tried to incorporate as best we could in the Proposed Rule and the Discussion Draft those concepts, but we struggled with that as well.

I don't know if it's helpful to you for me to just walk through them, but I would just say that we share your concern about where these then land and how we make sure they are captured somewhere.

Q. Specifically, I guess I struggle a little bit with should the Rules talk about how the Guidelines are developed, evaluated, and approved? Because at this point I don't see where...

I mean it's an important part

of this whole thing, and yet I don't see where that is really incorporated into the Rule.

A. I would say, as this came up earlier in terms of Commissioner Garcia's suggestion, should the Rules point to the Guidelines?

One of the problems that we had through this whole process is we have had to consistently remind everyone there's Rules and there's also Guidelines, so this isn't it.

I also think, just so you all know, we are preparing, at the risk of having too many documents, you know, the potential to have, when we're done with the Rule and the Guidelines, a guidance document. I don't know that it's a Handbook, but something that helps just tie all the pieces together in a specific way such that people could have 1 thing to look at and understand how the pieces fit together. I think that will be helpful and that could also refer to the Tools and

Templates, and it may be needed to answer your question.

I don't know that the Rule needs to call out how the Guidelines are crafted, but maybe the Rule does need to point to them in some way so that anyone looking at the Rule doesn't think that's the complete package, and so that they understand that there is multiple pieces involved.

Q. Specifically I mean within the Guidelines, is that going to be the process of how they are going to be approved?

I mean I'm trying to struggle a little bit with where that gets codified. I mean where do we understand, and at what level, who does the development, evaluation, and approval of the Guidelines? Because the Guidelines...

I understand we don't want to set forth the Guidelines in the Rule, and I understand the distinction between the 2, but I don't understand

how the Guidelines exist without some sort of a tie-in to the Rule.

A. Correct.

Our intent is to bring those Guidelines to you all and to provide an opportunity, as I said earlier, for public and Tribal input to those, and then the Commission, you know, would weigh in on those Draft Guidelines and ultimately finalize them or take action on them.

We do utilize Guidelines elsewhere, including, you know, our Acequia and Community Ditch Infrastructure Fund. That entire process is implemented through the Guidelines that this Commission crafted, and we did that with a lot of input from the New Mexico Acequia Association and New Mexico Acequia Commission because of the implications for them.

That collaborative process was really helpful, and then there was action of this Commission to approve

those Guidelines.

Q. Kind of following the same question, and that is particularly Number (9) in that section, it talks about supporting Regional Water Planning entities. There is 4 items listed there and they seem to be extremely important items.

Again, how do you envision that will be done/funded/supported/ evaluated? Is that within the Guidelines? Were you proposing that that is going to be addressed?

A. I think certainly in terms of A, under (9), the funding process would be definitely addressed in the Guidelines, and that's also called out earlier in the Statute.

I anticipate, in terms of statewide objectives, those are outlined in the Proposed Rule, but there may be a need for...

I don't know if it needs to be in a Guideline, but a Tool or Template that would help further

explain what's meant by those and what would be needed to be not only in compliance with them, but furthering their implementation.

When it comes to "alternative administration," I think that...

I don't know. I don't see that as something that's needed in a Guideline, but I'd welcome yours and others' thoughts on that.

I think the idea there is to the extent that a Region identifies alternative administration as a solution to the water management challenges that they are facing, the State, by this Statute, would need to support development of that alternative administration both from our Office and the Office of the State Engineer, but the Statute is specifically to us though.

Q. Then just one last item, and that is what I think was kind of proposed by Senator Lanier and Ms. Taylor:

Do you have any problem including a Severability Clause?

A. I am not an attorney, but no, I don't see any issue with that.

COMMISSION CARRASCO: Thank you.

MS. RISELEY-WHITE: Thank you so much.

HEARING OFFICER ORTH: Vice Chair Timmons, do you have questions?

EXAMINATION

BY VICE CHAIR TIMMONS:

Q. I have mildly formed questions, but I guess just kind of spinning off of Commissioner Carrasco's Comments, I am reading the Act and the requirement of what this Commission is to do, which is to promulgate Rules that, at a minimum, do 5 things:

Set the boundaries for the Planning Regions;

Establish criteria for the Commission to approve various Projects, Programs and Policies.

We can't get away from the

PPPs, because it's in Statute?

A. That's why we got stuck with it.

Q. There you go.

Establish the procedure for a Regional Planning Entity to develop and provide notice to the Commission about their concerns relating to Public Welfare and water planning of their Water Planning Region;

To also help establish a composition of the Water Planning Entity; and,

Last, a procedure for the Regional Water Planning Entity to consider Public Welfare Values and the needs of future generations of New Mexicans.

That is like the minimum of what we are tasked with doing, so I think our job is to compare what that requirement is to what the Rule is there.

There is a lot of other stuff in the Statute that we can try to tuck in there if needed, but we shouldn't,

for sure, be establishing that.

I guess I just -- some of the Comments about particularly the science and the data that relate to this whole effort, it may not be perfect, but we have to get a little bit more comfortable with making decisions with uncertainty.

I guess my question for you, Ms. Riseley-White, is still unclear, but I think in my mind, as we try to...

You made a Comment earlier about if you try to pin down, like, all of the procedures and all of that here in the Rule, it gets pretty impossible to move forward. I'm curious just to get your quick take on is the Rule simple enough to move forward in your read on it?

I guess I'm really curious to get to the point of where we can see the next Draft of revisions. With your level of comfort, is the Rule and the next kind of revised suggestions enough

to satisfy the Act at this point?

A. The short answer is yes.

I think the way it was described, in the conversation that we had with Staff, was, like Sara Fox said, "scaffolding"; right?

Commissioner García spoke to this earlier: How do you, through this Rule, provide the right sort of structural support while allowing for flexibility across the Regions in terms of their capacity and interests and values, and flexibility around data as data evolves, and how do we continually capture that?

I think, in terms of striking the right balance, that's what we tried to do with this Proposed Rule knowing that these other pieces are coming.

VICE CHAIR TIMMONS: Okay. Great.

Personally I get really nervous about assuming that we're someday going to be able to plan all of our water and we're going to know exactly how much water we have and

exactly how good that water quality is.

The questions that we get from community members are the hardest questions to answer, and so I think all of this is an exercise to move forward, and we have urgency to move forward. And while the Rules and our statutes might not always be perfect, it gives us a direction to point to.

I appreciate you and all of your Staff's effort to help us move forward on this. Thank you.

MS. RISELEY-WHITE: Thank you.

HEARING OFFICER ORTH: Thank you.

I should have mentioned earlier that Commissioner Anderson is no longer at the table, but she has been online for Ms. Riseley-White's Testimony.

Commissioner Anderson, do you have questions?

Can you unmute, Commissioner Anderson? Star 9 if you're on the phone.

Oh, she just texted, "No questions."

All right. Thank you very much, Ms. Salazar.

I see Commissioner Suina's hand up. Commissioner Suina.

COMMISSIONER SUINA: Yes, thank you, Madam Hearing Officer.

EXAMINATION

BY COMMISSIONER SUINA:

Q. Thank you, Director Riseley-White, for your Testimony. Like many of the Commissioners said as well, thank you for all the work. I know this has been a long endeavor. Your Staff has been working tirelessly on trying to navigate and get some Rules drafted and proposed.

I just appreciate also all the public outreach and the efforts taken by the Interstate Stream Commission, under your direction, to work with WSTAC and work with figuring out how to appropriately engage the

Pueblos and Tribes through this process. One, I want to just say that.

In that follow-up, you know, like my fellow Commissioners said, these Rules are -- I'm still trying to get my head around how we continue to proceed through this process and what the next step is.

I might have heard it, but can you clearly say what the next steps are and the timing in terms of incorporating some of the Comments that have been shared during these last few days, and of course the Public Comment received, and then what's the next milestone for that? Is it going to be another revision of these Rules?

A. Thank you, Commissioner Suina, for your question.

As I mentioned earlier we do have some further proposed revisions to offer today based on the commentary over the course of the last 2 days.

Then, I think in terms of

next steps, that will be dependent on Hearing Officer Orth and you all as a Commission in terms of deciding how to proceed.

Q. Thank you for that, Director Riseley-White.

I was just also wondering, I know we've had a lot of, at least on the first day, Comments and input by WSTAC and the Tribal leaderships, and I know I asked Mr. Chakeres this as well, but from your perspective is there the intent to try to also incorporate their Comments and maybe some additional enlightenment in their Testimony to help guide revisions from their Comments?

A. Thank you, Commissioner Suina.

First, I would just like to say how much I appreciate the effort of WSTAC, and how valuable it was to engage with that group over the last over a year now.

I would also say that we do have some further revisions that we are

proposing today that is responsive to some of the additional Comments from the Testimony you heard particularly on Wednesday.

Q. Thank you, Director Riseley-White.

I guess in that vein I just want to also maybe ask you, you know, I know you've been the Director here under this process, and I just would like to hear...

I know it's always been, if you will, a challenge and an evolving challenge on how to engage with Pueblos and Tribes and the unique aspect that our Pueblo Nations and our Tribal Nations have, and especially Pueblos in relation to their Water Rights and, you know, some Adjudicated, some in Settlement, and some Unadjudicated.

I would like to hear your thoughts on what you have learned, and also how you see what you've learned can help continue, develop, and navigate that engagement, especially through WSTAC.

A. Thank you, Commissioner Suina.

I think I would say that I appreciate this question because I want to emphasize, you know, the really Sovereign-to-Sovereign relationship that the State has with our Tribes. I think WSTAC is not intended in any way to supplant the true Government-to-Government consultation that the State conducts with Tribes, Pueblos, and Nations, and we need to continue that and bolster that; I think that's very important.

What WSTAC has provided, and not to say that Tribal leadership hasn't engaged with WSTAC, but WSTAC has provided an opportunity for much more ongoing communication which has resulted in better understanding of interests and concerns in both directions. I think that's been imperative in developing this Rule and the Guidelines, and I think it will continue to be really important as we move forward.

I just want to highlight 2 distinct ways that the State interacts with Tribes, which is through the Government-to-Government process, and with WSTAC having this ability to have the more ongoing informal communication is very valuable.

Q. Thank you, Director Riseley-White.

With my next question I just want to maybe diverge while also being inclusive of perspectives and knowledge, and I am using air quotes here on "data."

One of the things that I am concerned about, and I think fellow Commissioner García has mentioned this, as well as other commentators and folks that have testified, is how do we engage local understanding, knowledge, and wisdom, you know, of the Pueblos and Tribes? Since time immemorial they may not have written down the data or put it in spreadsheets and all of that, but there is a great deal of knowledge and wisdom in how

they understand water resources within New Mexico, and I would say all of New Mexico. Also in many of the watersheds where their communities sit, as well as the Acequia communities and Land Grant communities. Is it through the Public Welfare discussion that we've had wherein that will be incorporated?

Like I said, it's not something that is in a report, or it's not something in perspectives and knowledge that is in spreadsheets, but some of this knowledge and data goes back time immemorial, and in my understanding could go back thousands of years.

I mean I'm just curious on how you would see that information incorporated into these planning processes under these Rules and regulations.

A. Thank you, Commissioner Suina.

I would say in our list of Tools and Templates under development, we have a Tool or Template that is

intended to help support Regions in incorporating and engaging with traditional ecological knowledge. I think that is a Tool or Template that we'd like to workshop with WSTAC.

Similarly I think having a Tool or Template for Regional Councils about how to understand their Acequias and how to engage with them would be valuable.

I think we are really fortunate in New Mexico in that we have a rich heritage of water management in those communities that we can learn from and build on, and we certainly want to be sure that we're harnessing that moving into the future.

I also mentioned earlier that I think it's incumbent on all of us, as we implement this Act, to think about the concept of building local capacity.

Commissioner García and others have highlighted the difference between people who will participate in this process because they are paid to for

the entities they work for, and then those who have a lot at stake and are participating in a volunteer capacity while they are balancing their own farms and families, et cetera.

I think it is super-important for us in this process to make sure that we're engaging sufficiently those rural communities that may have more limited capacity to engage, and thinking through how we support that as we implement this work and how we support that, and then build local capacity such that those interests are fully represented.

Q. Thank you for that.

I guess also, you know, when we talk about this knowledge and information in lessons, sometimes we use the word "stories," and it kind of devalues, I guess, the weight of what comes from our Land Grant communities and Pueblo and Tribal communities.

Through this process I hope we continue to uplift and ensure that

that knowledge and wisdom continues to be part of the consideration as we, as a whole State, continue to steward our water resources.

Where we can bolster that in the black-and-white text I think will be very important, and in terms of equity as well. I think Commissioner García had some questions about equity. It might help uplift some of our rural communities and communities that have that and continue to carry that knowledge and wisdom.

I don't have a question to that, but just more of a Comment and a hope as we continue this as a state, and as various stakeholders to steward our resources for future generations as well as today.

COMMISSIONER SUINA: Thank you.

HEARING OFFICER ORTH: All right. Thank you.

I don't know if Commissioner Balok has a question or the chair; we do need a break.

Let's take a break then.

I'm sorry, Commissioner Balok; do you have a question?

COMMISSIONER BALOK: No, ma'am, I don't have a question. I just wanted to make a statement and that was to commend our Director:

Great job so far. There is a ton of stuff that we're going to have to muddle through, and there is going to be a lot of consideration that needs to go into all that.

But I just wanted to recognize all the hard work that you and the Staff have done. Thank you.

HEARING OFFICER ORTH: Thank you.

Mr. Chair.

CHAIRMAN SANCHEZ: Ms. Riseley-White, thank you for your Testimony, your professionalism, and your leadership.

EXAMINATION

BY CHAIRMAN SANCHEZ:

Q. In your Testimony -- I'm

paraphrasing -- I think you made a statement, "Messy is healthy." If you look at composition, it uses words like "... entitled..." and "... shall..." Sandia Pueblo published a Comment that Middle Rio Grande could have 100 members. I interpret those words to mean if you didn't have that membership, you don't have a functioning Council. Did Staff give thought to that?

A. Thank you, Mr. Chair.

Yes, and I believe Ms. Fox gave Testimony as to the other planning processes that we evaluated in other states like Colorado, where there are Roundtables with that kind of significant representation.

You are correct, it presents a challenge. I think that challenge can be overcome by providing the right organizational principles, such that you have much more limited participation, say, on a Steering Committee, but it is a valid concern

that warrants consideration.

Q. But keep in mind, "... shall..." means you must. If you don't have a member that meets that requirement, you don't have a functioning Council.

A. Mr. Chair, it says "... shall invite...," and so there is nothing that stops us from moving forward if that invitation is not acted upon.

Let's say they all act upon the invitation; right? Then you have that kind of large Council, particularly in the Middle Valley.

Q. Back to your Comment about "... messy..."; that seems to be "... messy..." potentially, and i just say that for what it's worth.

Do you envision anything in the Rule that could be moved to the Guidelines and still comply with the Statute?

A. I think to "comply with the Statute," as Vice Chair Timmons mentioned earlier, the Rule would only need to encompass those 5 items.

However, we did feel like, and received feedback from, the Discussion Draft that particularly related to public participation in the planning process, that warranted including in the Rule.

I do think you have to strike the right balance in a Rule, too. If it's too cumbersome, then it's hard to follow; right?

I would also say in response to your Comment that I wouldn't move anything to the Guidelines myself. However, I do think Mr. Harold Trujillo's Comments yesterday were very important. As someone who has been tasked in his position at Energy, Minerals, and Natural Resources Department implementing Rules, his Comments on make sure that they are very clear such that they can't be misinterpreted is a super-important suggestion.

To the extent that there isn't clarity, and it could be interpreted in

multiple ways, that could be problematic, and so I encourage you all to look at it.

We have spent many months immersed in it, and so I think a good eye on, like, "Is this capturing the intent," I think our Testimony over these last 3 days is intended to really provide an explanation of the intent, but let's make sure that this Rule is as clear as possible and easy to implement.

Q. Given that the Guidelines must be adopted by the Commission, that is a Policy document; correct?

A. Correct.

Q. The Rules are a legal document.

A. Correct.

CHAIRMAN SANCHEZ: Thank you.

HEARING OFFICER ORTH: All right. Let's take a break.

It is 2:40. Let's come back at 2:55. In the meantime, Ms. Becker, would you please distribute the 2 documents that you mentioned to all of

the Commissioners and to Mr. Gaume so he can see that the PDF has been corrected.

COMMISSIONER SUINA: May I still ask a question after the break or before the break?

HEARING OFFICER ORTH: We need a break.

COMMISSIONER SUINA: Yeah, after the break.

HEARING OFFICER ORTH: Yes.

COMMISSIONER SUINA: Okay. Thank you.

(The Evidentiary Hearing recessed from 2:41 p.m. to 2:54 p.m.)

HEARING OFFICER ORTH: All right. Let's come back from the break, please.

Let's see. Director Riseley-White, I believe Commissioner García thought of another question to ask you.

Commissioner García.

COMMISSIONER GARCÍA: Thank you; I appreciate the break.

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FURTHER EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you, Ms. Riseley-White, for answering all of our questions.

I think I had a few questions, and some of them have been answered by this document, so I'm still looking at it; okay?

One question I had is concerning input given by the Land Grants and Acequias. I just want to clarify that I was not involved in developing NMAA's Comments, that was done by a Grass Roots Committee. One of the recommendations was made by the Advisory Council for Rural Water Security, and that would have included the Acequias, Land Grants, and Mutual Domestics.

I think there was a Comment made saying that shouldn't be done because they are not Sovereign, and I don't think anyone was suggesting that they were. I think WSTAC is a whole other level of importance in terms of

Sovereignty and the statutory language, so they would not certainly be on the same level, but an advisory body would be appropriate in my opinion.

I was looking at the Statute, and the Statute notes that there would be engagement. It says:

> "Provide engagement with Indian Nations, Tribes, and Pueblos, including the use of the State Tribal Collaboration Act, [and then] provide engagement with Acequia communities, and provide for the engagement of rural communities."

They are mentioned in passing in different places in the Rule, but is there still an opening for some type of advisory structure for either Acequias and/or rural communities? Not like the WSTAC, but perhaps something less formal that still provides some kind of overarching advice to the process, because they are

unique and they face unique challenges to participation because of their volunteer nature. In some cases it's the unique cultural context, whether they be Acequias or Land Grants, and the unique challenges that they face.

I guess my question is whether there is an opening for that in the current Rule, to have an advisory body, one or more, that would provide for that purpose?

I mean since it is in the Statute and it's not in the Rule, what options do you think we have to address that?

A. Thank you, Commissioner García.

Our decision was to include just WSTAC in the Rule because of their distinct nature as Sovereigns. Do we think engaging in a more informal way and an ongoing way with Acequia and Land Grant communities would be beneficial? Absolutely.

Whether that needs to be in the Rule is something we determined to

not put it there with a concern that once you open that door, there might be other groups that have distinct interests that would want their own groups established by Rule.

I do think it's worth looking at, you know, the Statute that establishes the Acequia Commission because the Acequia Commission advises the Governor, the Legislature, and State Agencies on issues that impact Acequias.

Similarly, I think the Land Grant Council establishing Statute provides a similar framework.

But whether it's through the Acequia Commission, or some other process, would we welcome supporting, including facilitation, support, or otherwise that kind of convening? Absolutely.

Would we find that valuable? Yes, most certainly.

Q. I appreciate that answer.

You said you didn't do it

because it would open the door to everyone else, but the Statute mentions "... Acequias...," it doesn't mention everyone else, and there is a reason for that.

I believe one reason that Acequias and Community Ditches -- they are synonymous, by the way; same Statute, same term.

I noticed that in your Redline you put that in there. I think that's helpful because in their respective basins the Acequias are managing most, if not all of the non-Indian Surface Water Rights. That's a very big role, and there are many of them.

If you don't have a process that's orderly to get that advice, you run the risk of getting 50 or 100 Acequias coming to you individually, versus if you have an actual process. That's one of the reasons that it's helpful.

I just want to make the case that because it's mentioned in the

Statute, it's not like everybody else, and there is a reason.

Now one thing that I recommended earlier, and I don't think this is limited to Acequias, but is there an opening to use the Rule to point to Guidelines, something like "including, but not limited to," or something along the lines of, you know, "The Commission will consider these things, including creation of an advisory process for Acequias," or "advisory body."

You know, the Statute says "... rural...," too, which is interesting.

The recommendation that came from those communities was combining it into one advisory body, and it seems like a reasonable thing to do given what the Statute says.

I guess my question is can we point to that in the Rule, or point to a Guideline that would do that?

A. Commissioner García, I believe

so.

I also would just say the intent of that Advisory Work Group that you're mentioning and that was provided in a number of the Comments in terms of what it would achieve, I think would have great value wherever that needs to manifest.

But yeah, I think in terms of "Can the Rule point to the Guidelines," it seems, based on the conversation today in particular, that might be helpful. In what way it does that I'm not sure.

Q. Okay. Thank you.

Another question I had, and this is about Public Welfare again, I'm looking back at the Statute and comparing the Statute to the Rule.

You know, Commissioner Timmons read the, you know, things that should be here at a minimum, and there is 5 on C(1)(a), (b), (c), (d), (e), and 2 of the 5 relate to Public Welfare.

You know, the structure of

the Rule doesn't exactly follow those 5 but, you know, you have to kind of look to see where they are. Public Welfare is listed under -- let's see -- 14. Yeah, Section 14A(7), so it's kind of thrown in there with multiple other considerations.

If you read the Statute you would think that in the Plan, it has important role, but of course it is not mandating a statement. I mean I think the Statute is worded carefully to say, you know, "... notice of issues and concerns," and there is a lot of deference to the Regional Council about how they do that.

Presumably they could decide not to do anything on Public Welfare, the 2 out of 5, and yet it's just sort of disproportionate to me.

Is there any possibility of having a standalone section or subsection that kind of mirrors what's in the Statute in terms of the 2 procedures that Mr. Chakeres mentioned,

one being approval, the criteria for Commission approval.

No, where is it? Oh, here it is:

"... the procedure to develop and provide notice of issues and concerns; and, the procedure for a Regional Water Planning Entity to consider Public Welfare."

Again, it's soft language, it's not a mandate. You know, maybe there is a statutory reference or something that just mirrors that language somewhere, because it's there, 2 words, but it doesn't pop out the way the Statute pops out.

I think the Legislative intent seems to be that it was important to them, but I see the challenge of it. I kind of worry, you know, if I were in a Regional Council and trying to define Public Welfare, I think I would be outnumbered, so I don't know why I advocate for it so much. Just my gut

tells me that it is important, you know, as someone who does advocacy.

Is there a potential for that? You know, was it ever considered, or why is there a disparity and can we do it differently?

A. Thank you for that question.

You know, I think initially, Public Welfare aside, we drafted the Discussion Draft to track sequentially with the Act and a lot of people found that very confusing. I think it's very challenging in thinking about how to structure the Rule such that it's intuitive and easy to follow.

Based on the feedback on the Discussion Draft, this was restructured to be a little easier to follow. It's still kind of hard to follow, although I do think that the decision to distinguish between the Initial Planning Period and the ongoing Planning Period was a good one because I do think, as Staff presented earlier this week, that needs will be different

in those 2 periods.

When it comes to Public Welfare, I think what you're highlighting, Commissioner García, is that, you know, Mr. Chakeres' Testimony was really about how the State Engineer would utilize any Regional statements of Public Welfare, and I think that's the intent of Section 16. The reference to Public Welfare in the rest of the Statute would inform Section 16, but as I said earlier, could inform planning decisions and recommendations as well.

I think your Comment is highlighting, in my mind, that there's multiple reasons for a Council or a Region to have a discussion around Public Welfare. To the extent that this needs to be restructured to meet your Comment, I would leave that up to you all.

I think we just felt strongly that we wanted to provide an opportunity and a requirement for

Councils to consider Public Welfare even if their statement is, "We didn't consider it because we didn't want it to be a roadblock," as I said earlier, "to getting a plan done." However, providing that opportunity and requiring it as something they need to at least comment on was very important to us.

Q. Okay. Thanks for your explanation.

I guess, like Commissioner Suina, I have a question about our process, and I don't know who to direct this question to you, but when we were asked to vote on whether to initiate the Rulemaking and we were given the Draft and asked to vote to proceed or not to proceed, my understanding was that we would have time to deliberate. Is this the deliberation?

Like when is the deliberation? Like we're asking questions and, you know, I'm looking at my clock and, like,

when do we deliberate?

To me, deliberation is more than like asking you questions, it's like, you know, when do we have discussion?

HEARING OFFICER ORTH: I'm happy to answer the question, Commissioner García.

COMMISSIONER GARCÍA: Okay.

HEARING OFFICER ORTH: All right. What we've been doing this week is making what Lawyers refer to as an evidentiary record; that is to say, a record of the Testimony or Comment, documentation, PowerPoint presentations, every nature of Comment and documentation that folks who had input into this Rule wanted to bring to this Commission. We've been trying to do that in a reasonably orderly way, even without some of the more rigid distinctions that are sometimes drawn by other Boards and Commissions in their Rulemaking.

I think it's gone pretty well

in terms of getting input from folks who wanted to offer it, and Boards and Commissions typically reserve the right, and you have to make sure you reserve that right when you notice up the hearing in the New Mexico Register, reserve the right to deliberate and act on the Proposed Rule as soon as the record is closed.

I would then transfer the gavel here to the Chair, and he would lead you through the deliberative process, at the end of which you would make a decision.

By the way, under the Open Meetings Act all of that occurs publicly. Rulemaking is not one of those activities that a border Commission engages in where you can take it into a smoke-filled room back here.

One, I think, although you reserved that right to yourself, as you note, it's already after 3:00 o'clock and we are not even done with

input yet. We're going to hear more from the Agency Staff, and there may be other folks who want to make a Closing Statement, or at least I think I heard someone say that.

So yeah, we're not done yet, and there is definitely not time for you to deliberate.

COMMISSIONER GARCÍA: Okay.

HEARING OFFICER ORTH: The next question is whether the Commission would appreciate a Report from me following the receipt of the transcript and before the deliberations. My Report never includes Policy recommendations to you; that's your job. All I do is put in an orderly way everybody's last, best, you know, final proposal to you.

Let's say you've heard 5 different suggestions around Section 16:

"Delete it;

"Amend it;

"Revise it," you know;

"Massage it somehow."

I'm going to put those 5 proposals in the same -- I'd probably be able to fit that on one page, but it would be on 1 or 2 pages such that you can go to the final proposals you have and have that discussion while they are all sitting in front of you.

COMMISSIONER GARCÍA: That's super-helpful, thank you.

I do want to express appreciation for the openness of the Evidentiary Hearing, but thank you; I was not clear.

HEARING OFFICER ORTH: Yes, certainly.

Did I see your hand, Vice Chair Timmons?

VICE CHAIR TIMMONS: Just to be clear you can't do that Report until we close the Evidentiary Hearing.

HEARING OFFICER ORTH: Not only until we close it, but also until we have the transcripts.

VICE CHAIR TIMMONS: Okay.

One other question on that:

While we are deliberating do we have all the documentation and court reporting going on at the same time, or is that just a regular meeting?

HEARING OFFICER ORTH: It occurs during a meeting, rather than a hearing, and often it kind of depends on whether the Agency, or any other participant, wants to pay for the transcript.

I don't know, Ms. Becker, whether that will happen or not, but there one more thing:

As you're proceeding through deliberations I'll be sitting with you and I'll just be taking notes, I won't be talking. I'll just be taking notes. As you're deliberating I'm going to ask you, You've made that decision on Section 16. What was your reasoning? If I don't hear it, right, you'll probably tell me, but I'm listening for your reasoning.

I then would Draft something called a "Statement of Reasons," which

shows the basis for each of your decisions, and then you adopt that at a subsequent meeting, so there is a process.

All right. Any other questions? I usually step through this at the very end, and so you're getting a preview of it.

All right.

COMMISSIONER SUINA: Madam Hearing Officer, this is Commissioner Suina.

HEARING OFFICER ORTH: Yes, Commissioner Suina.

COMMISSIONER SUINA: Yes, I apologize. I'm going to try to make this really quick, but I would be remiss, given the Testimony provided earlier in the week, without asking you, Director Riseley, one more set of questions:

FURTHER EXAMINATION

BY COMMISSIONER SUINA:

Q. I know we had talked briefly

about ISC Staff and you considering some revisions. In respect to the boundary maps and the boundaries, I believe it was Governor Riley who discussed specifically how Settlement boundaries where the Pueblo of Acoma is, if there is the consideration of redefining that or would that be in a Subregion, I guess, delineation, or would there be a revision of that Region?

A. Thank you, Commissioner Suina.

We had prepared just a few follow-on Q/A questions to address remaining issues, and I would like to ask Mr. Erdmann if he could come up, because we had prepared him to respond to that.

HEARING OFFICER ORTH: I'm sorry.

Is this the right time, Ms. Becker, or should this follow the next little bit of your presentation? What's the best way?

MS. BECKER: I recommend we close

out with this witness, and then I have the opportunity to bring the 3 witnesses up for final responsive questions to the Commission. Then I'm prepared to walk through the document, and then I will be asking for the record to be closed and to conclude this proceeding.

HEARING OFFICER ORTH: All right.

Commissioner Suina, would it be okay to hold on your question until we bring Staff up?

COMMISSIONER SUINA: Yes, it would.

I do have one more question, just making sure I don't lose any time with Director Riseley if she is the one to answer this:

I have a similar question for the Middle Rio Grande Region, and I don't know if Mr. Erdmann will be the one to discuss that as well.

HEARING OFFICER ORTH: I think the Director is prepared to answer.

Q. BY COMMISSIONER SUINA: My

question on the Middle Rio Grande Region is specifically, you know, with the complexity we have in the Middle Rio Grande Region, and looking at the Region and, again, looking at the Rio San José Region, does it make sense to look at, you know, a Region that the State and stakeholders are going through Settlement to be a Region, or a Subregion, in respect, again, to some of these Water Settlements, the ongoing Water Settlements, and then potential future Settlements? Thank you.

A. Thank you, Commissioner Suina.

I think you raised 2 things that are going to be challenging that are distinct, but both exist in the Middle Valley, and that is not only are there a lot of water users, and this was the questions I think I got from Chairman Sanchez as well, but how does it work with that big of a Region and that diversity water interests?

Further, how do we manage

Planning Regions where there are Indian Water Rights Settlements underway, and I think those are both very good questions.

I would say, as I answered in terms of my Direct Testimony about the delineation of the Regions, I still think it's worth it to have those bigger Regions with all those parties represented. Does it present a challenge in terms of how to effectuate a planning process that can reach successful outcomes? Yes.

Do I think that's impossible? No.

And so yes, Chairman Sanchez, it will be "... messy...," but it will be super important for us to facilitate a very effective process, and I think we need to prepare for that.

On the second piece related to Indian Water Rights Settlements, you know, as I said earlier I don't know that we'll have any way to delineate all the Regions such that

they all recognize all of the potential boundaries that come into play, and so I think that is a significant challenge.

Should these plans further implement those Settlements as we are seeing them really as sort of global resolutions of water issues in those basins? Yes, absolutely.

In terms of the 6 middle Rio Grande Pueblos' negotiation of their Water Rights, I think that is going to be a significant factor for all water users in the Middle Valley, and obviously a very important task ahead of us.

Also I think it's going to take time, so not unlike the discussion about, "Do you wait to plan until you have all the data?" I don't think we can wait until that Settlement is complete. What that means for that Region I think is going to be very challenging.

I know I may not be providing

a very satisfactory answer, but I think we've put forward what we think is the best possible delineation of the Regions, and we're prepared to work, hopefully, with this Advisory Roundtable that we'll convene, and others, on how to create a process that is as effective as possible.

Q. As a follow-up to your response, is there a potential where we have Pueblo or Tribal representation in 2 different Regions, you know, in the case where we have a Pueblo or Tribe in 2 separate Regions?

I mean is that a possible scenario given, you know, your response that it wouldn't be a revision of the delineation?

A. That is correct.

I should say that we had both feedback from Tribes saying that they wanted to make sure that they would not be split across Regions, and then other Tribes asking to be sure to be included in multiple Regions. I think

they thought if they were included in multiple Regions, they could have priorities in multiple lists, so we heard different perspectives on that specific question from Tribes.

Q. As the Rule is proposed, what is the ISC's resolution or current thinking on how to incorporate and/or address those separate Comments?

A. I would leave Mr. Erdmann to Comment on the specific requests from Governor Riley in particular, but I can say in the Proposed Revisions that were just handed out here today we're not proposing any further revisions to the delineations of the Regional boundaries.

COMMISSIONER SUINA: Okay. Thank you. I just wanted to have clarification on that point. Thank you.

HEARING OFFICER ORTH: All right. Thank you, Commissioner Suina.

Commissioner Russell.

COMMISSIONER RUSSELL: Thank you; this is just a process question:

When Director Riseley-White is dismissed and we move on to the next procedure, does that close the opportunity to ask questions about some of the proposals, or is there an opportunity to ask questions about the revisions that were turned in during the break?

HEARING OFFICER ORTH: That comes next, sir.

COMMISSIONER RUSSELL: Okay.

HEARING OFFICER ORTH: All right.

Any other Commissioner questions before we move to the next phase here?

All right. Ms. Becker.

MS. BECKER: Thank you.

What I am asking the Commissioners to do is recognize that in front of you is the Petition Rule, referred to as the Proposed Rule. In each of the Testimonies of the New Mexico Interstate Stream Commission Staff there were attached recommended changes for your consideration that

came about as a feature of Public Comments submitted on the Public Comment portal.

Since then there have been additional Comments, some in writing and some made over the last 3 days, the New Mexico Interstate Stream Commission has taken that into consideration and has further revisions, and the amalgamation of those 3 has not yet been compiled into 1 document.

I'm noting this for the record because it's helpful, and I appreciate, Hearing Officer Orth, your offer to put together a reading for the Commission that identifies those changes, because I would have to do it in 3 versions:

The Petition version;

The testimonial version; and,

The changes now that we are prepared to identify. I just want to be clear that they have not yet been combined into 1 version.

With that I'm prepared to walk

through the additional changes that were just now in response to questions of the Commission after hearing Public Comment, recognizing that the witnesses have already testified to those to seek incorporation.

I am going to, in response, Commissioner Russell, begin with the Director, but she will stay present and be available for additional questions.

Director Riseley-White, would you come back.

Thank you.

REDIRECT EXAMINATION

BY MS. BECKER:

Q. Beginning with some questions and your response, Commissioner García had a number of questions for you regarding Acequias, and I just wanted to follow up with you:

Is it your understanding that there are 23 Nations, Pueblos, and Tribes recognized in New Mexico?

A. BY MS. RISELEY-WHITE: Yes.
Q. Is it your understanding that there are approximately 800 Acequias or Community Ditches in New Mexico?
A. BY MS. RISELEY-WHITE: Yes, approximately.
Q. Is one of the factors in your consideration for representational members in any Council the fact that there are already organizational bodies set up by Statute to help with that collective representation for the Acequias?
A. BY MS. RISELEY-WHITE: It depends I think is my answer in the way that the Rule is worded.
It says if there is an Acequia Association or a Community Ditch Association, they could designate a member. In absence of that we would look to the New Mexico Acequia Commission to help designate an appropriate member for that representative seat.
Q. If you will turn with me to what

is the recommended changes that were just handed out, specifically Section 12, is that the "Composition" section?

A. BY MS. RISELEY-WHITE: Yes.

Q. Am I to understand that you are recommending at this time in paragraph (f), "a member of each Regional Acequia or Community Ditch," there should be additional language to include "Community Ditch"?

A. BY MS. RISELEY-WHITE: That's correct.

Q. The idea for representation, it's not every Acequia, rather every Regional Acequia. Is that right?

A. BY MS. RISELEY-WHITE: The intent is to have 1 member from an Acequia or Community Ditch to join each Council if relevant in that Region.

Q. Located within that Region; is that what that means?

A. BY MS. RISELEY-WHITE: Correct. Uh-huh.

Q. Okay. If not, then you would defer to the New Mexico Acequia

Commission.

A. BY MS. RISELEY-WHITE: To help designate a rep so that we have that seat filled, yes.

Q. And why is that?

A. BY MS. RISELEY-WHITE: Because as Commissioner García highlighted, it's critical for us to have Acequias and Community Ditches represented on these Councils.

Q. I guess my question is what is the role of the New Mexico Acequia Commission then?

A. BY MS. RISELEY-WHITE: In the absence of a regionally organized association we would need assistance in selecting who would be an appropriate member.

I should also say it's worth noting that in A(2), "At-Large Members," there is the potential for additional Acequia representation in the seat that's for farmers in the Region; right? Just to note.

Q. Okay. I'm emphasizing this

because it's come up:

There has been substantial Comment, and I know that it was of much consideration in the idea that there was collective representation. I think that was one of your underlying factors, knowing that the Commission served as a statutory body to aid in the representation. Was that a part of your reasoning?

A. BY MS. RISELEY-WHITE: Yeah. We felt like it was important to include Acequias and Community Ditches in the Representative Members for sure.

Q. Okay. Then let's go back to this lastly:

Did I follow correctly that your offer is for the New Mexico Interstate Stream Commission to prospectively provide financial assistance to any Work Group organized either by the New Mexico Acequia Commission, or the New Mexico Acequia Association, in working on water issues pursuant to a Regional Council?

A. BY MS. RISELEY-WHITE: Yes, I think we're very open to that in terms of the value it would bring. It also would be potentially something that could be funded through any Grant program under the Guidelines, or both.

Q. Okay. Let's turn if you will, please, to page 1.

A. BY MS. RISELEY-WHITE: (Witness complies.)

Q. There is an additional Redline here. Would you please describe what you are recommending to the Commission should be added?

A. BY MS. RISELEY-WHITE: The State team, in response to the commentary this week, felt it would be important to add this, just to put a pin in this concept:

> "It should be well understood that this process would adhere to State water law," and just include the Redline here at the end of the "Objectives" section, which is Section

6, to say:

"Nothing in this Rule supersedes or violates State water law regarding the role and authority of the State Engineer, or the doctrine of Prior Appropriation."

"Furthermore, nothing in this Rule Permits the Condemnation of Water Rights, or determines, abridges, or affects in any way the Water Rights of Water Right Owners in the State, including Water Rights of Nations, Pueblos, and Tribes."

Q. Why did you recommend that this language be added?

A. BY MS. RISELEY-WHITE: We are recommending that this language be added because there was a number of questions over the last couple of days around the potential for this planning process to have implications for Water Rights, and so we wanted to just make

sure it was as clear as possible that would not be possible, and that any action that might implicate Water Rights would have to go through a Water Rights Permitting process; it just felt important to just include that here.

Q. Is this last sentence beginning with the word "Furthermore...," is that borrowed from the Water Security Planning Act?

A. BY MS. RISELEY-WHITE: It is. I don't have it in front of me, but that last section of the Act. That language comes straight from there as well.

Q. Thank you.

I'm going to ask that you stay in the front row, please, for additional questions that are asked of you, but for the next edits I'm going to ask both Sara Fox and Mr. Erdmann to come forward.

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PARRY ANDREW ERDMANN,
after having previously called,
was examined and testified as follows:

SARA M. FOX, P.E.
after having been first called,
was examined and testified as follows:

REDIRECT EXAMINATION

BY MS. BECKER:

Q. Let's please look at Section 9, Mr. Erdmann, and I believe this is a question for you:

The Redlines here, there is both strikeout and new additions. Would you please identify what you are recommending the Commission change?

A. BY MR ERDMANN: Yes, Commissioners:

The recommended change here, and this is marked on the Redline here in Section 9, is to adjust the language under Subsection B(9) here to read:

"If a Council determines that Subregions may be

beneficial for Regional Water Security Planning, the Council shall request Commission approval to establish a Subregion."

The intention here was just to add clarity based on some of the questions we got yesterday, so as to be clear about how that process would work.

There is a subsequent addition under Subsection 1, that also expands the bases here. It talks about the basis for the Subregion, such as:

"Reliance on the same water sources;

"Existing water planning organizations;

"Water Rights Adjudication or Indian Water Rights Settlement boundaries; or,

"Otherwise in the circumstances that make the proposed Subregion distinct from the Region."

Again, this was an opportunity

to put in and be much more explicit based on some of the feedback we got over the last 2 days.

Q. Mr. Erdmann, in addition is there a new Paragraph 6 that you previously testified to that would explicitly identify Indian Water Rights Settlements that's contained within your Written Testimony?

A. BY MR. ERDMANN: Yes, there is. That was a recommendation that we accepted that was originally submitted by a representative of Laguna Pueblo, and it reads --

HEARING OFFICER ORTH: If you're going to read, Mr. Erdmann, keep it slow.

MR. ERDMANN: Okay. I don't need to read it in that case; we've already covered it.

Q. BY MS. BECKER: Yeah, it was already covered in your Testimony; I just wanted to identify that it was there.

Now there were questions,

Mr. Erdmann, by Commissioner Suina and Comments regarding 3 Regions specifically that WSTAC sought, and individual Pueblos sought to have redrawn for significant reasons. Would you please address the 3 of those as to why the New Mexico Interstate Stream Commission decided not to amend the boundaries?

A. BY MR ERDMANN: Of course.

The 3 pieces here that were recommended specifically -- well maybe I should speak to them broadly, because the reasons are the same for these different pieces:

Essentially the concern here is that we don't want to create Regions that are so small that it's an administrative burden on the people within that Region to be able to generate an entire plan; that's one of the concerns.

The second of these concerns is that we want to -- gosh, I'm sorry.

We don't want the Regions to

be too small, relative specifically to the Rio San José as was noted by Commissioner Russell.

The boundaries for the Southwest Region are the same as the Arizona Water Settlements Act boundaries. That includes a portion of land that would have been otherwise reclassified into the Rio San Jose Region, and it was our feeling that by leaving that boundary intact, it actually provides some additional opportunities for the folks who would live in that portion of the Southwest Region.

The third piece here is that we essentially wanted to be able to address these with Subregions because, as has just been discussed, there are a number of Settlements that are pending or have not yet been taken up.

Even if we were to address all the Regional boundaries to reflect all of the existing Settlements, that is not all of the Settlements. There

are ongoing and future Settlements to be addressed as well, so we were trying to come up with a subdivision process or a Subregional process that would work now, but also work in the future as additional Settlements are finalized.

Q. Mr. Erdmann, if you'll look at the reasons given for why the Commission would allow a Subregion there are 5 bases. Is that correct?

Six now, if they accept your recommended change.

A. BY MR ERDMANN: That's correct, yes. That's correct.

Q. Okay. What I heard you just say is that there were specific proposals for 3, and in each of those you found concerns regarding sufficient population. You found potential other Settlements or other water sources, and I want to make sure I understand:

There was other factors that would cause it to not be a separate Region.

A. BY MR ERDMANN: Yes. There is

the issue of it being too small of a population as one of the main reasons.

The second is that we are not able to accommodate upcoming Settlements as they occur; and,

Then the third reason is in relation specifically to the San José piece of the Arizona Water Settlements Act components of this.

Q. Okay. In effect, if the Pueblo of Acoma was no longer in the Southwest Council, which they currently are, they would not be eligible for Arizona Water Settlement funding. Is that correct?

A. BY MR ERDMANN: The Arizona Water Settlement funding, as I understand it, is tied to the Southwest Planning Region. By having some portion of their lands within that Region it actually gives them access to an additional opportunity.

Q. It's your position, on behalf of the New Mexico Interstate Stream Commission, that the Subregion

allowance affords the most flexibility to both be included and do the work, but ultimately be integrated into the Council. Is that right?

A. BY MR ERDMANN: That's correct.

Our hope was to develop the Subregional portion of this such that it could be used to provide greater flexibility for Regions to be able to tackle some issues like this. In particular, the ones that we're discussing right now, but also as future Settlements are addressed, or as planning work proceeds from kind of the initial cut to some really detailed work such that, then again, there is an opportunity.

I think Subregions will become increasingly relevant as we have finer resolution data.

Q. Would you look with me, please, at Section 15, which is on Page 8.

A. BY MR. ERDMANN: (Witness complies.)

Q. I'm looking at the last paragraph,

which is C(6), and it's a renumbered (6). Does that section also deal with Subregions?

A. BY MR ERDMANN: It does.

This edit deals with the process for consolidating and ranking Subregional priorities into a full Regional PPP list.

Q. Commissioner Russell had questions about how that integration would occur, and I know there was Testimony from Ms. Fox that it needed to be decided up front. Outlined in Section 9 is the process for how that would be integrated, but in response to his questions does this section allow for there to be a way to highlight that which is coming from a Subregion within the larger context of a Council's prioritized lists?

A. BY MR ERDMANN: Yes, I think it does. I think this is an opportunity, at the time that a Subregion is being considered, to determine how those considerations are going to be folded

in.

This also relates to the Readiness discussion that was largely the result of the question from Commissioner García.

Certainly, our intention with this, and with these sort of Readiness categories, is to do as Director Riseley-White suggested; have a process by which we were able to work with ideas that really were coming from potentially small enough entities that it was going to be difficult for them to get it to the level of being shovel-ready such that this process moves those forward.

That was really the intent, or the primary intent of trying to break things up in that way, and to make sure that we always have a set of shovel-ready projects and other projects that are approaching shovel readiness such that we always have steps we can take.

Q. Okay. Thank you.

Now I'm going to go back, and just follow along in the order of Redline.

I'm on Page 3, and it appears that this is a more grammatical change, but please describe the reason for the removal of the word "the self-organized Council" in Paragraph C.

A. BY MR ERDMANN: I think the removal here was just to add additional clarification. We already have this described as a self-convening opportunity, and this was just a way to make that less confusing and more clear.

Q. Okay. Please continue with Section 11, Paragraph B, and identify those changes.

A. BY MR. ERDMANN: In Paragraph B there are 2 changes in Subsections (2) and (3) to move from "Commission acceptance of plans" to "Commission approval of plans." I think that's intended to be more clear about what the role of the Commission is in this,

and that they're not merely being accepted for use by this Commission, but in fact being approved as to their completeness by the Commission so that they can be used more broadly.

Q. Okay. Now I'm going to turn to Section 12, which is "Composition":

There were questions, I believe by Commissioner Suina, as it relates to representational capacity. While you have testified together that you're trying to build capacity --

I think this is a question for Ms. Fox.

-- does this section in A(1), allow for invited governing entities to, in essence, pool or share their representation if they choose to do so?

A. BY MS. FOX: Yes, it does.

Q. How does that work?

A. BY MS. FOX: If we can all look at A(1), in that first paragraph we have the sentence:

"A single representative may represent multiple

governmental entities in the event that a governmental entity is located..."

That first sentence is the important part. There has been a lot of discussion about how large these could be and how much of a burden it could be on entities, so we have put into the Proposed Rule a process by which multiple entities may send, you know, a single trusted person that they both trust, or maybe up to a couple of trusted people to represent their interests. That is allowing for people to essentially to pool resources together.

Q. Do you envision that happening, or do you know what the basis was for including that concept?

A. BY MS. FOX: The inclusion of this concept is essentially allowing these Councils to essentially, you know, bridge organizations and build trust. I don't know if necessarily we will start out with a lot of, you know,

single people representing multiple entities, but the hope is as we get in a room and have messy conversations, as Director Riseley-White has alluded to, we will build trust within those groups. They can then be represented by a single entity rather than everyone sending their own.

Q. I think there was a Comment that might have been by Chair Sanchez that if a COG member was going to represent multiple municipalities because of a shared interest, is that conceivable?

A. BY MS. FOX: Yes, it is.

As stated in the "Representative Member" section, a governing body may appoint the same...

It is in the last sentence:

"Each Representative Member shall be appointed by resolution of each governmental entity's governing body."

Those governing bodies could all appoint the same person.

Q. Okay. Turning now to the next Redline, and Director Riseley-White addressed this briefly:

I'm looking specifically at 12(1)(f), and that language was added. I just want to make sure it's clear that the reading of this is, "What if there are multiple Regional Acequia Associations?"

A. BY MS. FOX: Yes.

This Rule allows for each Regional Acequia or Community Ditch Association to have a Representative Member on the Regional Council. This is essentially supposed to scale with essentially the concentration of where Acequias are.

I would expect that probably the Upper Rio Grande and Canadian Council will have more Acequia representation because there are more Acequias there than maybe other areas where there may only be 1 Regional Acequia or Community Ditch Association.

Q. Were you present, Ms. Fox, for

the Testimony of, I believe, Dr. Archuleta from the New Mexico Land Grant Council who stated that there are 28 active Land Grants in New Mexico?

A. BY MS. FOX: I was.

Q. And in looking at G, is that 1 Representative Member from each active Land Grant?

A. BY MS. FOX: Yes, it is.

Q. Okay. Then would you look at (h) and please describe what you are recommending?

A. BY MS. FOX: Yes.

In response to Testimony heard today and throughout these couple of very long days we've been having we thought it was imperative that we make sure our Flood Control Districts, or essentially that subdivision, are represented on these Councils. We have proposed language here identifying what I believe are Flood Control Authorities that are defined either in Chapter 4 of the Administrative Code,

or Chapter 72 relating to flood control.

Q. Was that in direct response to Comments that you heard here, or questions directly from the Commission?

A. BY MS. FOX: Yes, it was.

Q. Okay.

Turning now to page 5, I'm continuing in the same section, which is "Composition":

You have made a couple of changes. Would you please describe the Redline?

A. BY MS. FOX: Yes.

Under 12A(2)(h), those are clarification edits that we have recommended to make this more clear.

In Section 3, or I guess 12A(3), which is "Non-Voting Members," we have increased the Non-Voting Members to up to 6, versus 5, to accommodate just more people from other Regions having a seat at these Councils.

Q. I believe this may have been a question from Commissioner Chávez:

Is it your understanding that there are at least 2 active water planning steering committees that would be satisfied in paragraph (i)?

A. BY MS. FOX: Yes.

Q. And who are they?

A. BY MS. FOX: They are...

Q. They are not listed, I'm just asking if it's based on Comment, if you recall.

A. BY MS. FOX: The 2 active Regional Water Planning Steering Committees are the Estancia Basin Water Planning Committee, and the San Juan Water Commission, which did complete both of the last rounds of Regional Water Planning as well.

Q. Okay. Did they submit a Comment to this effect, Ms. Fox?

A. BY MS. FOX: Not directly related to this, but we did note that they were not present in the representation, so these edits are made to add clarity to that.

Q. And to allow for their

participation.
A. BY MS. FOX: And to allow for that participation.
Q. Okay.
Turning now to "Non-Voting Members," paragraph (3), would you please describe those changes?
A. BY MS. FOX: Yes.
We have increased the number of Non-Voting Members from up to 5 to be up to 6, to better reflect the or variety of different connections that we have across Regions.
Q. And specifically it says:
"... up to 3 Non-Voting Members."
Did I read that right?
A. BY MS. FOX: Yes:
"... up to 3 Non-Voting Members for areas that are hydrologically connected."
That would also include artificial connections, such as pipelines.
Q. Why did you make that recommended

change?

A. BY MS. FOX: Well it's very important for people in the Northwest Region, who have their water diverted into the Rio Grande, to have representative seats on that.

Additionally this will allow for representatives of the Canadian Council to be represented in the High Plains Council with the forthcoming pipeline for the Eastern New Mexico Regional Water Authority.

Q. Thank you.

Turning to Section 16, paragraph B(1), would you describe that Redline?

A. BY MS. FOX: Which section again; 13?

Q. Excuse me. I'm looking at page 5, Section 13B(1)?

A. BY MS. FOX: Yes, 13B(1).

We have struck the words "... publicly available..." from B(1), which is another clarity edit on our end.

Q. Anything further you want to say

about that?
A. BY MS. FOX: "... publicly available information."
"Distributing information" is more inclusive.
Q. Is that designed such that no matter where you get it, as long as it is authorized and qualified, you will share it.
A. Yes.
Q. Okay. Let's see.
Let's turn now to Section 14, "Considerations."
A. BY MS. FOX: (Witness complies.)
Yes.
Q. In Paragraph B there is a new edit to line (5). It appears to be a new (5), or a replaced (5) and a new (6). Would you please read those?
A. BY MS. FOX: Yes.
Building on the Testimony and Comments that we have heard, we have added 2 considerations:
"... watershed health [and]
"Impacts of wildfire on

source water protection and water quality protection or improvement."

Q. Were those Comments directly in response to the Energy, Minerals, and Natural Resources Department, State Forester, and Commissioner questions?

A. BY MS. FOX: Yes, it was.

Q. Would you look at Paragraph C, which is:

"Council shall consider, with resources provided by New Mexico Interstate Stream Commission staff..."

I regret that "Staff" should be -- well I guess it's not capitalized, so that correct.

Why was that edit made?

A. BY MS. FOX: This was based off of a question received from Commissioner Russell where he indicated that a clarification that staff will help provide resources to Councils to be able to consider the statewide objectives listed in this

section.
Q. By "... resources...," Ms. Fox, is that understood to be Tools and Templates, guidance, and potentially funding sources.
A. BY MS. FOX: Yes.
Q. Okay. Could that also be staff time?
A. BY MS. FOX: Yes; it feels likely it will be Staff time.
Q. Just to belabor the point, it could also be NMISC funding for facilitators or contractors.
A. BY MS. FOX: Yes, it could.
Q. Okay. Then I'm going to ask if you will just confirm that the remainder of the Redline edits in Paragraph C are designed to be grammatical and better aid --
A. BY MS. FOX: Yes.
Q. Let's look at D.
A. BY MS. FOX: (Witness complies.)
Q. How would you describe the change that you are recommending in Paragraph D?

A. BY MS. FOX: D is further clarifying kind of the discussion around the evolving state of science and, as Commissioner Timmons so succinctly put, that we are moving into an area of more uncertainty. While we will have data gaps, we still need to move forward, so we have clarified that bottom sentence to read:

> "Councils may not delay the development or updates to a plan due to data gaps."

Q. Is it the intent of the Rule that those gaps would be addressed as potential PPPs to be advanced?

A. BY MS. FOX: Yes.

Q. Thank you.

Turning to Section 15 it appears that there is the removal of the word "... information..." from A(1). Would you describe why that edit is being recommended?

A. BY MS. FOX: That edit is being recommended to be better aligned with the information that will be sought

from WSTAC.

Q. Is that edit made in response to Comments or questions of the Commission?

A. BY MS. FOX: I believe so.

Q. If I may further clarify, is it the idea that resources are to be provided by the Interstate Stream Commission; however, the Water Security Tribal Advisory Council may choose to participate as they see fit?

A. BY MS. FOX: Yes.

Q. Okay. Let's continue with Section 15, "Criteria."

There appear to be a number of changes beginning with Paragraph (4). Would you please continue identifying those and describe why they are being recommended?

A. BY MS. FOX: Yes.

Section A(4) has the addition of "... Nations, Pueblos, and Tribes...," to be inclusive of our Sovereign partners.

Number (5) is another

clarification of what we mean by not just the Comments of State and federal agencies, but any engagement that was done.

Number (7) has "Council considerations of...," just furthering the point that we want documentation of that consideration of balancing water uses and the needs of future generations.

Number (8) is just a formatting correction.

Then we have added additional language in Number (11), which is:

> "Written consent by the leadership of any Nation, Pueblo, or Tribe, should a Plan PPP list include any activities that may impact Tribal lands or Tribal waters within the exterior boundaries of Pueblos, Trust Lands, or Reservations, or access to Tribal data."

Q. Let's break those down if you

will, please.

When you look at (4) and (5) that highlights "engagement with," and I believe (5) was already edited, but I just want to be conscious of that.

In your Testimony you identified not just State and federal agencies, but it also was expanded to "... local..." and "... Tribal..." Do you recall making that edit?

A. BY MS. FOX: Yes, I do. That is located on page -- it's within my Testimony and...

Q. Right. All 3 of you did make that edit, and I just want to identify that it's not, regrettably, consolidated into this Comment, so I just wanted to make certain that "... Tribal government" is included in Paragraph (5).

A. BY MS. FOX: Into that statement as well.

Q. Noting that, I wanted to ask, and this may be a question for Mr. Erdmann:

There were both Comments made and questions asked by Commissioner Suina in particular regarding water quality, specifically TAS, or "Tribes as States or Sovereigns." Is that where that would come in?

A. BY MR ERDMANN: Yeah.

For the Commissioners, the proposed edit that we had on the way in to this -- and I don't know; it may have been prior to that, and was part of this prior to the beginning of this hearing adding "... federal, Tribal, and local governments." I think that frankly would include Tribal Governments and their full range of capacities and regulators.

Q. Yes.

My question was it may be, in the Tools and Templates, that you provide information regarding those Pueblos, Tribes, and Nations that do have Tribal water quality standards.

If not recognized in the Tools and Templates, if a Tribe, Pueblo,

or Nation identified that they had water quality standards, would this edit require that the plans document this information from a Tribal government?

A. BY MR ERDMANN: The Comment here, I think so, frankly, yes. If the Tribal government had those regulations this would be the place where that would be documented.

Q. Would it also be the place that, if it's not contained within the Tools and Templates that you already testified to, if there was Tribal ecological knowledge, it could come in here in that form?

A. BY MR ERDMANN: I think this is certainly 1 place that's the case.

Frankly I think Tribal ecological knowledge has been developed over a tremendous amount of time and is likely to fit in more than 1 place.

Q. Okay.

A. BY MR. ERDMANN: But this is absolutely 1 of them.

Q. Okay. I just wanted to make certain that was responsive.

Then Paragraph (7), "Council consideration of...," and I believe this may be back to you, Ms. Fox:

Do you know where that recommendation came from?

A. BY MS. FOX: I believe that was part of the discussion and questions from the Commission of just wanting stronger language around this documentation.

Q. Ms. Fox, is it stronger because it's broken out from and separate from Public Welfare Values such that they are each considered and documented in the Plan?

A. BY MS. FOX: They are still together at this point because they are inextricably linked.

Q. Are they on the same line?

A. BY MS. FOX: Yes.

Q. Okay. I'm look with me, Paragraph (6).

A. BY MS. FOX: Oh no; sorry. My

bad.

They have been broken up, I'm sorry. I misspoke. We have mirrored the language in Number (6), "Council Consideration," and have broken out "Public Welfare Values" and "future generations" into two separate items.

Q. Was that in response to extensive Public Comment, and then further questions from Commissioner García?

A. BY MS. FOX: Yes.

Q. Okay. Lastly, let's look at Paragraph (11).

A. BY MS. FOX: (Witness complies.)

Yes.

Q. "Written Consent":

Was that edit made to address Comments by Pueblo leadership that were presented here?

A. BY MS. FOX: Yes, it was.

Q. Okay. Let's continue to Paragraph C:

There are some edits. Do you want to identify what that is and where that came from?

A. BY MS. FOX: Yes.

As we discussed with many questions on our first day of Testimony, the proposed PPP list, we have added clarifying language to make it clear that it is 3 prioritized lists of Projects, Programs, and Policies based off of Readiness, as discussed here this afternoon. That Readiness, or this pipeline of Readiness, is really aiming to capture Projects beyond just shovel-ready Projects.

It is the intention of ISC Staff to make sure that we are capturing the whole range or whole spectrum of completeness of Projects within these 3 buckets to be prioritized within each Readiness bucket.

Q. Is it your understanding, Ms. Fox, that this is responsive in trying to articulate that PPPs really can be ideas?

A. BY MS. FOX: PPPs can be ideas and should be ideas. We should be

considering lots of ideas.
Q. Is it your understanding that this edit to Paragraph C and the new A, B, and C, are designed to address both Comments and questions by a number of Commissioners as to how this will work?
A. BY MS. FOX: Yes, and we also intend to have a Template associated with this specific section.
Q. Could you describe that a little further?
A. BY MS. FOX: Essentially an Excel sheet such that it's very clear, and we can like look at it all together and not just have to describe it in words. I apologize, but that's not ready yet.
Q. Okay. Do you expect there to be further guidance regarding how the Commission will be able to evaluate PPPs in a Plan?
A. BY MS. FOX: I believe so.
How Councils prioritize will be left to them, though different prioritization strategies will be provided in the organizational

Templates. We will aim to, in parallel with that, provide guidance to the Commission on how to evaluate these as well.

Q. Turning to Paragraph (2), is that the removal of text that you're recommending contained in the new C?

A. BY MS. FOX: Yes, it is.

Q. Okay. Is there anything further that you would like to say about this section?

Not "this section," but this paragraph.

A. BY MS. FOX: No.

Q. Okay. Then let's just go to the last change that's being recommended by the New Mexico Interstate Stream Commission in response to Comments and questions, and that is on Page 8. It's still within 15, and it has to do with Paragraph (6). What is your edit and what were you thinking here?

A. BY MS. FOX: I believe my colleague, Mr. Erdmann, covered this already, but I can restate it.

Q. Oh, I apologize; you are correct.
This was in response to how Subregional priorities would be integrated into a Council Plan. Is that correct?
A. BY MS. FOX: That is correct.
Q. Okay. Is there anything further that you think warrants explanation?
A. BY MS. FOX: I do not believe so.
MS. BECKER: Okay. With that, I imagine there are additional questions from the Commission, and then I will be prepared to make my closing remarks.
HEARING OFFICER ORTH: Thank you, Ms. Becker.
Commissioner Russell.
COMMISSIONER RUSSELL: Thank you.

EXAMINATION

BY COMMISSIONER RUSSELL:
Q. I guess I'm not quite clear on the last page, Paragraph (6), I guess.
"The process for consolidating and ranking Subregional priorities into

the PPP list for the Planning Region shall be resolved by the Council, pursuant to its operating principles, as provided in Paragraph (3) of Subsection B, 19.25.16.10."
Is that right?
A. BY MR ERDMANN: That's correct.
Q. When I go to Subsection 10B(3), the only thing I see relevant is the...
I mean it's all about how they are formed and --
A. BY MR ERDMANN: Commissioner, I think I may have a simple, but a little bit embarrassing reason for your confusion here, which is that it should say 19.25.16.9.
Q. "16" what?
A. BY MR ERDMANN: 9.
Q. Okay. Yeah.
A. BY MS. FOX: I think it should be referencing both actually, because the operating principle, the reference that we're talking about here, notes that the operating principles of all

Councils need to be determined ahead of time as well, so it's both probably.

It should be consistent with how the Subregion intends to integrate its priorities on the front end when it becomes a Subregion, and also consistent with the operating principles of the Council.

Q. It's hard to jump around in these pages for sure.

I'm looking at 9B(3). Is that right?

A. BY MS. FOX: What we're referencing is 9B(5).

Q. (5).

A. BY MS. FOX: That would be one of the references.

And then 10 --

Q. It's basically, "You guys figure it out; we're not telling you."

A. BY MS. FOX: Well it's both. It's "Please figure it out ahead of time so that we don't have an issue on the back end," and also that it's

consistent with the operating principles of the Council, which is laid out in 10B(3)(e).

Q. Okay. This kind of goes back to my earlier question to Director Riseley-White about if the Subregion develops specific priorities for -- and I'm just going to make it up -- or the San Francisco River, then they have to bring that to the Council and the Council figures out whether, within their larger ranking, it's going to be Number 14, or whether the larger Council is going to say, "Well, this is what the Subregion was, 1, 2, 3, 4."

A. BY MR ERDMANN: Yeah, thank you for that question.

Our hope is that this gets worked out in advance, and there are many ways that prioritization could be done. We have heard several discussed here, including things like a scoring rubric, or voting, pr consensus. There are more ways that one can go about

doing decisionmaking.

Determining how the Subregional priorities will be sort of folded in before submitting the Subregion out, we feel like that's going to be important to the success of the Subregion process such that they don't end up showing up with a list and talking to a larger group who aren't interested in hearing their ideas. I think that needs to be worked out before they determine specifically the Projects that they are working on.

Q. Okay.

A. BY MS. FOX: That's why it's a criteria for you all to consider upon making a Subregion.

Q. Yes. All of the Rules that would apply to the Council, the Council would insist apply to the Subregion in terms of how "Projects" might qualify; right?

A. BY MR ERDMANN: That seems likely.

I suspect there will be Councils who find additional avenues in

term of how to go about exercising this decisionmaking other than what we have anticipated, but something like you describe.

COMMISSIONER RUSSELL: Thank you.

HEARING OFFICER ORTH: Next will be Commissioner García.

EXAMINATION

BY COMMISSIONER GARCÍA:

Q. Thank you for taking this line-by-line; that's very helpful. I'm going to start at the back:

I was wondering about a recommendation that was in Mr. Chakeres's Testimony, and was also submitted by the Pueblo of Acoma about "shall" or "... may..." in 19.25.16.16. This says:

"State Engineer, in his decisions, may consider..."

I'm sorry, yeah; I thought it was "shall." I thought that they were going to change that to "shall."

MS. BECKER: Commissioner

García, I can address that:

That is in the recommended changes made by Mr. Chakeres in his written Direct Testimony.

COMMISSIONER GARCÍA: That's correct.

MS. BECKER: It is not reflected on here simply because these are our most recent edits in response to the Comments and questions that have come in the last 3 days. I am no longer able to make that witness available, so we are no longer making any recommended changes to that section.

COMMISSIONER GARCÍA: Wait, I don't understand.

MS. BECKER: Mr. Chakeres is not here, and that was the subject of his Testimony, and I am not able to make him available for additional questions or edits.

COMMISSIONER GARCÍA: Okay. I guess what are we saying?

I'm just noticing that wasn't in here, but it will be added later, or

it won't?

MS. BECKER: Yes, that is going to be the role of the Hearing Officer. Is she is going to compile the edits at least, thankfully, on behalf of the Commission, which would reflect the Proposed Rules Petitioned in July and the edits that were in the Testimony of Mr. Chakeres.

So yes, you're correct, it would be that change that he identified from "... may..." to "shall," and then these additional that we're making to you now.

COMMISSIONER GARCÍA: This Redline is just what's come up in the last couple days.

MS. BECKER: You've got it.

COMMISSIONER GARCÍA: Okay. All right. Thank you. Just wondering.

Thank you for that clarification, because I thought there were some others, too, but that one really stood out to me and I was curious.

Q. I was going to come back to this Regional Acequia representation:

I do want to thank ISC Staff for the way in which this was included in the Draft Rule because I think it is an acknowledgment of that efficiency, you know, and representation that's provided by these regional associations.

You know, I'm just kind of struggling with how we usually say "Regional Acequia Association," and "Acequias" and "Community Ditch" are the same thing. I see adding it doesn't have any affect other than just being a little bit more complete and accurate.

I'm wondering if it can be worded "Regional Association of Acequias and Community Ditches." It is just semantics, but it looks like there is a Regional Acequia Association, and then there's 1 hypothetical Regional Ditch Association, but it is just the same.

I have a Regional Association

in Mora, and there is Acequias and Community Ditches. Sometimes the same Acequia on Monday will call itself an Acequia, and the next day they'll call themselves a ditch, and the next day they'll call themselves an association.

I think there was some confusion earlier about, "In this county we use English, so we don't use the word 'Acequia.'" We're bilingual, so they are used interchangeably and the law is interchangeable. I would just kind of word it to say "Regional Association of Acequias and Community Ditches" so that we are not implying that there is 2 different kinds of associations. There is 1 kind of association, and there is Acequias and Community Ditches in that association.

That's tiny, but kind of significant for being accurate, but the inclusion and the way that you went about it I think is appropriate. I mean I think it's good policy.

I was also looking at the way that PPPs are prioritized and I did appreciate the explanation earlier about the 3 stages:

Idea;

Scoping; and,

Reading.

I think that provides a little more inclusion of the different capacities.

I was thinking of whether we could consider something along the lines of "Councils may add categories of PPPs to address diverse needs of each Region," you know, because I think they have that discretion. You don't have to say it here, but it might give some guidance so that if they want to, you know, rank watershed projects, municipal projects, ag projects, they can ensure that there's a diversity of types of Projects that are coming forward in their PPP list such that they are not all just 1 sector. That's 1 idea that I wanted to float.

A. BY MS. FOX: I think that's a great idea, and I would want to leave that up to the Council and how they would specifically want to do that prioritization.

Q. It would leave it up to the Council, and for me, of course, you would want to leave it to them, I agree with that.

A. BY MS. FOX: I think that's totally reasonable.

However it comes in, all that we're requiring in this section is that when a Water Security Plan comes before the Commission, they have it consolidated into those 3 buckets.

Q. Did you have anything to add, Mr. Erdmann? Were you going to add something?

A. BY MR ERDMANN: Thank you, Commissioner.

The one piece that I was going to add to this is that, you know, I mentioned a couple of ways that one might go about prioritizing. I think

another way that one might go about doing this, and it will be included in the Tools and Templates, is to look at categories and decide in advance about things like, "30% of our money is going to ag projects, and 30% of it is going to go to municipal projects."

Now I am making the numbers up, so I don't intend for those to be representative of the values of these things, but determining it in a way to balance those priorities and ensure that there is comprehensive consideration of the range of water use in a community in the Region.

I think that's something that is clearly critical based on the Comments, and it's critical for the Agency for this to be successful.

Q. Okay. Thanks.

One other question I had is about some of the concerns that were brought up by the Governors of the various Pueblos yesterday, or the day before. One of the...

I see that you addressed some of that input with written consent. I don't want to presume to speak for the Pueblos, and I would not do that, but I'm wondering if there is going to be a process to go back to the WSTAC and ask if this language has addressed their requests.

I mean I think there was some more language and some more process that they were recommending that might not be captured here, but I think they could probably speak to that better than any questions I have.

Is there going to be a process where they will have a chance to review this and give feedback, or how will that work?

Hearing Examiner?

HEARING OFFICER ORTH: Ms. Fox.

MS. FOX: This is kind of a process question of whether WSTAC would be able to provide additional Comments on the language being added?

MS. BECKER: I can answer that.

HEARING OFFICER ORTH: I'm sorry; no, I don't think so.

I do see, for example, on page 7 in Section 15.11, the consent, for example, that was requested. I see that added as a new revision here.

Is that responsive to your question though?

Q. BY COMMISSIONER GARCÍA: It is in part, and I do see that and I appreciate, because I did hear that as a request. I think I heard some other recommendations that aren't captured here, so I would be curious if this is addressing what they requested.

I did hear the written consent, and I'm wondering, like other recommendations they had, like the Water Settlement boundaries and the weighted voting, if that was something that would be considered. I think one of their major concerns was how to maintain that Government-to-Government relation.

Just from the perspective of

observing, you know, Adjudication and engaging with Pueblos and Tribes, it was a very big deal to have Governors here yesterday I think. To me it was sort of a graceful overture to come and participate here, even though really where they should participate or where they would participate very often is this Government-to-Government relation, but I think there is a practicality to being here.

I think that's what they were trying to get at; how to maintain that Government-to-Government and avoid being outvoted. I just wonder if that is something that we're contemplating or thinking about, and do you have any thoughts as Staff about whether we're going to address that?

MS. BECKER: Commissioner García, I'm going to interrupt:

The process is this is essentially like the best and final answer. This is the efforts of Staff to address the questions and Comments.

We're seeking to have the record closed and have your deliberations and discussion and review. There is no further window of time for more people and more Comments.

COMMISSIONER GARCÍA: So is this deliberation?

HEARING OFFICER ORTH: It is not deliberations, this is actually supposed to be for your questions of Staff based on their final proposal and the final bits of their proposal.

Again, this is not all of the final proposal due to the time that would be necessary to compile all 3 revisions, as Ms. Becker said. These are the last bits of the final proposal.

Do you have other questions related to what you see in this document?

COMMISSIONER GARCÍA: I'm sorry, I'm asking questions about process.

There is recommendations here from the last few days, and then there is Staff recommendations. Do we

discuss those or --

HEARING OFFICER ORTH: Staff has recommended revisions --

COMMISSIONER GARCÍA: I mean the Testimony. Like the Nat Chakeres "shall" to "... may..." or "... may..." to "... shall"; do we ask questions on those?

HEARING OFFICER ORTH: No.

Mr. Chakeres is, as Ms. Becker said, not with us and not available to answer questions right now. I know that he was thoroughly questioned when he was here yesterday.

At this moment, though, it is time for Commission questions of Director Riseley-White, Ms. Fox, and Mr. Erdmann around these final Proposed Revisions in this document.

Vice Chair Timmons.

VICE CHAIR TIMMONS: Maybe it would be helpful to clarify that in deliberation are we able to confer with Staff on changes or it's just the group here?

This is the time to ask questions that we need their input on.

HEARING OFFICER ORTH: That's right. At this moment it's not really the time for you to, if you will, speak to one another in terms of the how you would intend to vote or what is going on in your head ahead of deliberations. This is the time to seek clarification or additional Comment from Staff on what they are presenting to you because they are not going to be allowed to speak once we get to deliberations.

I see Commissioner Carrasco's hand and Commissioner Russell.

COMMISSION CARRASCO: Well this is a procedural kind of question, but within Director Riseley-White's Written Testimony was a number of edits that Staff would make which are not incorporated here. Are we able to address them, since they are all here today, or we just accept that they will be incorporated in a final version?

HEARING OFFICER ORTH: Yes, they

will be incorporated in a final version that I'm going to prepare after we receive the transcript.

There just wasn't time, the way this hearing has progressed, for a final ultimate compilation of each of the 3 versions; that's what Ms. Becker has said.

I'm sorry, Ms. Becker.

MS. BECKER: May I clarify that the way a Rulemaking works is the witnesses present Testimony, there is questions on that Testimony, and then the additional information that comes in, then there is questions on that, but the scope keeps narrowing to that which is asked.

The witnesses are all available here for you now on the most recent changes they made in order to be responsive to your questions. If they could make an edit, as was suggested by Commissioner García, to add "and" instead of "or," and we can follow up and do that.

Did we get it right is basically the question now. Did we listen and get it right? This is your final chance.

HEARING OFFICER ORTH: Okay.

Commissioner Russell.

COMMISSIONER RUSSELL: Okay. I think that's the answer to the question I was going to ask. It's kind of hard to...

Thank you. I think that's the answer to the question I was going to ask.

It is kind of hard to assess, "Am I completely satisfied with the text," when I know there is a piece of text over here that I'm not looking at at the same time, or that's not incorporated.

I'm wondering when you send your compilation, would we have an opportunity to say, "This isn't quite what I thought it was; could you change this?" I'm understanding the answer is no.

HEARING OFFICER ORTH: All right.

Staff can no longer change it, but you all collectively can decide that, in fact, "They didn't quite capture what I was looking for in that sentence."

We do know that there is a basis in the record provided by other Commenters, for example, or even in the Staff's earlier Testimony, and you want to tweak it, so long as your tweaks aren't outsized.

COMMISSIONER RUSSELL: The tweaks would be by Council agreement or vote or something, and then we could change it so long as it was based on something that had been presented during this hearing.

HEARING OFFICER ORTH: Exactly.

COMMISSIONER RUSSELL: Okay. Thank you.

HEARING OFFICER ORTH: All right.

We are down to our last 30 minutes or so, and we have a number of other Commissioners.

Commissioner García, are you done?

All right. Thank you.

Commissioner Chavez.

EXAMINATION

BY COMMISSIONER CHAVEZ:

Q. I'll try and keep it short:

I just wanted to make sure on the 19.25.16.12, "Composition of Councils," I agree with Commissioner García that it should be "Regional Acequias and Community Ditches."

Then on Section 2(i), where the San Juan Water Commission supposedly falls under, I'm not sure if it meets our requirements.

We had been part of the Regional Water Plan since its inception, or since the '80s, but I'm not sure we are still active or an active Planning Region, so I'm not sure if we meet that requirement just to let you guys know that.

Then on Ms. Taylor's

presentation, she mentioned a Severability Clause. Did you guys consider that?

HEARING OFFICER ORTH: I believe you have Testimony from Director Riseley-White that they would not oppose the inclusion of a Severability provision.

Is that not correct?

MS. BECKER: That is not correct.

I believe the response was, "I'm not a Lawyer and I'm not commenting."

I'll ask the witness to the step to the mic.

MS. RISELEY-WHITE: I believe what I said was I'm not an Attorney, but I don't think I would oppose it. But yeah, I'm not an Attorney.

HEARING OFFICER ORTH: Thank you.

All right.

Q. BY COMMISSIONER CHAVEZ: Could you Comment on my thoughts of the San Juan Water Commission's being able to

participate in section (i)?

A. BY MR. ERDMANN: Frankly we're trying to make edits in order to be able to encompass San Juan Water Commission without excluding any of the other groups that we've discussed, which is really the Estancia Basin Water Planning Committee.

It seems like the word "... active..." is really the concern here.

Q. Yeah.

A. BY MR. ERDMANN: What the Director is saying is as long as they have been active during this time period, it doesn't have to be continuous activity.

Q. So active since the previous --

A. BY MR. ERDMANN: Yes, active at some point since the 2016/2017 Planning cycle.

Q. Since --

A. BY MS. RISELEY-WHITE: At some point; that was the intent of that edit, to remove the "... continuously active..." because it appeared that

was part of the issue with the San Juan Water Commission. If that edit didn't resolve that, then that might warrant further reviewing language.

Q. I would feel more comfortable if there was more review, if we can do that, but I'm not sure we can.

HEARING OFFICER ORTH: You will be able to do that during deliberations so long as critical mass of you agree.

COMMISSIONER CHAVEZ: That's all I have. Thank you.

HEARING OFFICER ORTH: Thank you.

Commissioner Carrasco.

COMMISSIONER CARRASCO: I have no questions. Thank you.

HEARING OFFICER ORTH: Thank you very much.

Vice Chair Timmons.

EXAMINATION

BY VICE CHAIR TIMMONS:

Q. My only question was to clarify, Ms. Fox, if you intended to put an Excel template into the Rule, or if

that's part of the Guidelines and Tools and Templates category?

A. BY MS. FOX: The Excel kind of is intended to be part of the organizational Templates alluded to by Mr. Erdmann in his Testimony.

Q. So not in addition to the Rule.

A. BY MS. FOX: Not in addition to the Rule.

VICE CHAIR TIMMONS: Thank you.

HEARING OFFICER ORTH: Thank you.

Online, Commissioner Suina.

COMMISSIONER SUINA: Yes, thank you, Madam Hearing Officer. I know we've had so many questions, but maybe my process question will help me feel better about going forward here:

You know, I think, Madam Hearing Officer, as you phrased it, this is the last and best proposal. I think, in discussion, and with other Commissioners' questions, there is still some other edits that are out there.

In terms of the process are,

like, WSTAC or others able to continue to submit comprehensive revisions or responses between now and when we deliberate, or is that window closed?

HEARING OFFICER ORTH: That window should be closing in the next 30 minutes or so.

But, again, all of it that has been submitted and is said in the next 30 minutes will be compiled. Although you won't be able to take input from any presenter or commenter anymore, you will have it to look at in an orderly way as you step through your deliberations.

COMMISSIONER SUINA: Okay. Thank you for that.

I know this is kind of hard because there's pieces everywhere, but maybe I can ask some questions for the record, and I guess maybe this would be a Mr. Erdmann and back to the questions I had earlier for Director Riseley-White:

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EXAMINATION

BY COMMISSIONER SUINA:

Q. In terms of WSTAC's concern and considerations regarding the delineation of Adjudicated areas and Settlement areas, either into revising the delineation of Regions or Subregions, can you point me to the specifics with any of the revisions that addresses that Comment and that concern?

A. BY MS. RISELEY-WHITE: Yes, Commissioner Suina, this is Director Riseley-White.

So as we mentioned earlier, we are not proposing in these final, last best offer any changes to the delineations of the Regions. We recognize the concerns that have been raised and we think that they are important for this Commission to consider.

Mr. Erdmann provided our rationale earlier for why we opted to not propose any further delineations

of the Regions.

I would also just like to take a moment to echo Commissioner Garcia's Comments on the importance and significance of the Tribal Governors who were here on Wednesday and how much we appreciate their engagement.

I do think that some of the other requests or proposals that they made could potentially be addressed elsewhere, including the considerations related to weighted voting as part of options in the organizational principles that the Commission will be -- Staff will be teeing up for Regions to help inform their decisionmaking.

I want to, again, appreciate their involvement and just say we are not here proposing any further revisions to the delineations of the Regions themselves.

Q. Thank you for that response, Director Riseley-White, and that clarification.

My second question, I guess for clarification, is in regard to consent:

I understand Ms. Becker took Andrew Erdmann through specific language changes, and I guess my point or my question is...

Sorry; I'm trying to hurry.

My question, Mr. Erdmann, is do you feel the revision addresses the concern if the Pueblo or Tribe feels that there is an infringement or impairment of their Tribal Sovereignty or a Water Right where they would be able to voice consent and, I guess, have consent over a specific, like, PPP or criteria within a Region?

A. BY MR. ERDMANN: Yes, Commissioner, and thank you for that question.

I would say there are 2 aspects to how we tried to address that. One is the initial proposed revision that is on the first page to the objective, to be really explicit

about the fact that nothing happening as part of this planning process is going to impact settled Water Rights, whether they are Tribal or otherwise.

The second piece is in this Section 15A(11) -- sorry, there is some changing sides of the page here -- talking about the consent that can be provided to the...

Let me try that again.

This section describes the opportunity for leadership of any Nation, Pueblo, or Tribe, to provide consent in the manner that you're describing should one of the proposed projects implicate their resources.

A. BY MS. RISELEY-WHITE: I would just add, because it says "... plans shall...," it is saying that "... plans shall..." document that consent.

Q. Thank you, Mr. Erdmann and Director Riseley-White.

In the execution of these Rules and Regulations as the best and final, as well as any other revisions

that get compiled, what is the specific process in the event a Pueblo or Tribe does not give consent? What happens then under this new revised and proposed language?

A. BY MS. RISELEY-WHITE: Thank you, Commissioner Suina:

If a Tribe does not give consent that would be documented and provided by the Region to the Commission when they seek approval of their plan.

To the extent the Commission would accept and approve a plan that has documented lack of consent, that will be a decision of the Commission obviously, but I would assume that would be a grounds for considering the Commission considering not to approve a plan.

Q. Thank you, Director Riseley-White.

In the event that happens, and, you know, say a Commission does, you know...

Because we all change and the

Commission evolves over time. Is there another way that Pueblos and Tribes could follow up or appeal that decision by a Commission?

A. BY MS. RISELEY-WHITE: I want to make it clear that I don't know the answer to your specific question, Commissioner Suina, except to say that just because something is in a plan doesn't mean that it necessarily moves forward; right?

Councils are not policymaking or action-taking bodies themselves, so they are making a recommendation, including a list of PPPs. To advance all of those PPPs there will need to be funding, and there may be consideration of Water Rights Administration or other issues. So just because it is included in a plan doesn't mean that it necessarily occurs.

Hopefully, that's helpful.

Q. Well I understand your response, but I think we did hear a couple of

situations and examples where Tribes and Pueblos did have concern and, actually, infrastructure projects or certain decisions regarding water stewardship and water management went forward even though they did not consent.

I just want to highlight that that's where my concern is coming from just having heard that at the Commission and at these hearings, and having those existing examples and data points, if you will.

I'm not, like, trying to argue, I'm just making a point as to why I'm asking the question and making sure that we understand the gravity of this particular point I think that was brought up during Testimony.

But with that, I'll leave that point.

Going forward again, has there been any additional revisions in the proposals -- and I couldn't follow all of them; I'm trying to read

through -- regarding WSTAC going forward?

A. BY MS. RISELEY-WHITE: Yes, Commissioner Suina:

I would just say I know this is difficult because there is proposed revisions from Agency Staff in our Written Testimony, and then separate proposed revisions in the document we distributed today, so you are not seeing them all in one place, but there are proposed revisions from WSTAC in both of those locations.

COMMISSIONER SUINA: Thank you for that, Director Riseley-White. I apologize for the brevity, and I'm trying to, like, capture everything so that we can put it on record.

That's all I have for right now, Madam Hearing Officer. I may have 1 more question, but let me gather my thoughts.

HEARING OFFICER ORTH: All right.

Actually, let me just offer this just as a placeholder:

You might want to follow up with Commission Counsel around the possibility, for example, of a mandamus action.

You had asked what might happen if the Commission approved a plan that did not follow the mandatory criteria here in Section 15. The very first sentence ahead of all the mandatory criteria is:

"In order to be approved, a Regional Water Security Plan must meet the following criteria..."

Then, of course, it includes:

"... documented written consent from any Nation, Pueblo, or Tribe."

Again, I'm not going to presume to advise you on mandamus actions, but that's a pretty strong basis there if the Commission ever decided to ignore that.

Commissioner Balok, do you have questions?

COMMISSIONER BALOK: Madam Hearing Officer, yes, ma'am. I'm not sure who to direct the question to, but Commissioner Chávez sparked a neuron here that caused the question.

EXAMINATION

BY COMMISSIONER BALOK:

Q. Can any of you all tell me where the Pecos Valley Artesian Conservancy District would qualify as participating?

HEARING OFFICER ORTH: Ms. Fox will answer.

MS. FOX: Yes, Commissioner Balok, we have included in our additions at the end of both my Testimony, Mr. Erdmann's Testimony, and Director Riseley-White's Testimony the inclusion of Artesian Conservancy District in 19.25.16.12a(1)(e). Essentially the suggested edit by Pecos Valley Artesian Conservancy District was taken.

COMMISSIONER BALOK: Outstanding.

Thank you. I was looking for that and not seeing it, so I appreciate you pointing that out for me.

That's all I have, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you.

Vice Chair Timmons.

VICE CHAIR TIMMONS: Super minor thing:

On the edit, the "conservancy" needs to be spelled correctly.

MS. FOX: Once again, I'm very bad at spelling, sorry.

HEARING OFFICER ORTH: Thank you.

Chair Sanchez.

CHAIRMAN SANCHEZ: No questions.

HEARING OFFICER ORTH: All right. Anything further from the Commission?

Commissioner García.

COMMISSIONER GARCÍA: In case it wasn't clear, I think that there should be something about a Working Group or an Advisory Group relating to Acequias under "Rural Issues," and I

think that could be like a placeholder in the Guidelines to say, "The Guidelines will address that." It's not at the level of WSTAC, but it's a less formal advisory capacity.

I think I might not have nailed it in my earlier questions or requests, but it's not here and I want to get it on the record.

HEARING OFFICER ORTH: Thank you.

I completely forgot to call on Commissioner Anderson, I'm sorry.

Commissioner Anderson, do you have a question?

COMMISSIONER ANDERSON: (No audible response.)

HEARING EXAMINER ORTH: No questions.

Okay. Thank you.

Did I see your hand, Commissioner Russell?

COMMISSIONER RUSSELL: I'm hesitant because of the time, but I just want to be clear on this Public Welfare issue that the Act highlights

prominently the development and notice to the Commission of issues and concerns regarding or relating to Public Welfare and water planning:

FURTHER EXAMINATION

BY COMMISSIONER RUSSELL:

Q. When you go to the first notice of it, on 14B(7), it's just "Public Welfare." It's not clear what it's about, you know. We might benefit from having some kind of verb in front of it such that they will discuss or they will inform or they will notice, but just "Public Welfare" is pretty blunt.

A. BY MS. RISELEY-WHITE: Thank you for that.

Q. That's a question; does that seem blunt to you?

A. BY MS. RISELEY-WHITE: I think this Commission will have a lot to think about in terms of Public Welfare and any potential revisions to this proposal based on the conversations we've had yesterday and today.

HEARING OFFICER ORTH: All right. Thank you very much, panel.

Ms. Becker.

MS. BECKER: I wanted to ask one question in follow-up.

HEARING OFFICER ORTH: Please, go ahead.

MS. BECKER: I wanted to ask this of Director Riseley-White.

REDIRECT EXAMINATION CONTINUED

BY MS. BECKER:

Q. Based on the question by Commissioner García do you want to change your "or" to "and" in 12(1)(f) regarding "Regional Acequias and Community Ditches"?

A. BY MS. RISELEY-WHITE: Yes.

MS. BECKER: Would the record please reflect that we did make an additional change to this last final version.

HEARING OFFICER ORTH: All right. Thank you very much. I know what I want to do; thank you very much,

panel.

Mr. Gaume, would you confirm, please, that the written handout -- and I'll just tell you this was also e-mailed to the Commissioners -- accurately reflects the Legislative format strikeouts and such?

MR. NORMAN GAUME: Yes, it does; thank you, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you very much.

Did you have anything to add to your earlier statement now that we have this in hand?

MR. GAUME: No, Madam Hearing Officer.

HEARING OFFICER ORTH: Thank you very much.

Ms. Becker, do I understand you have a wrap-up statement?

MS. BECKER: Yes, I do.

HEARING OFFICER ORTH: All right. Please go ahead.

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CLOSING STATEMENT

BY MS. BECKER: In closing, I want to thank you for listening, or for your active listening and discussion.

I hope that you heard through the Testimony of Director Riseley-White and all the witnesses what a re-imagining opportunity this was, as directed by the Legislature, to find, in essence, that sweet spot from the prior planning efforts and our future vision of that which is not entirely top-down, and not entirely ground-up, but has that middle ground. I believe that's how Mr. Erdmann characterized it, as "... the middle ground," and we are trying to reach "... the middle ground" or that sweet spot.

I trust that you have heard that those minimum criteria that are set out in the Act regarding ensuring that this Rule establishes the boundaries and the number of Water Planning Regions, you heard the consideration of that and the inclusion

of that, the criteria for Commission approval such that you know what is before you in a plan and what that would look like, and how to consider prioritized Projects, Programs, and Policies.

I trust that you heard through the witnesses that there was a procedure for a Regional Water Entity to develop and provide notice to this Commission on Public Welfare. That was primarily through the Testimony of Mr. Chakeres, but also through Director Riseley-White.

The fourth component that needed to be in this Rule that you needed to hear was the composition of a Regional Water Planning Entity.

There is great discussion even now, until the end of Section 12, of how to build something that was both elected officials in their capacity, why they should be Representative Members, why At-Large Members are important, and why they get selected,

and how there is a process for anybody who wants to be involved who lives in that Region, to be a Region-specific stakeholder in addition to the public from wherever you live, so ample public process.

Then lastly, that there is a procedure for a Regional Water Planning Entity to consider Public Welfare Values. That is the language right there in Section 14 stating that, "The Commission shall consider Public Welfare Values."

With that, I think that you heard that there is the structure in the composition, the consideration and the criteria to allow these other subsequent documents to fill what will give both substance and direction to both the Council and the Commission ultimately to be able to approve these Plans, which are volunteer bodies choosing to come together to do this good work.

I want to identify

transparency. That's a word that I heard a lot of today. People were asking for a transparent process, and I think you heard in the Testimony of Ms. Fox from the very beginning of how this Proposed Rule came about. There was really good effort to be as inclusive as possible in terms of making sure, at every step and every decisionmaking juncture, in terms of where we go from here and how we best express what it is that we're trying to do, was sought.

We also brought in contractors at the expense of New Mexico dollars to say, "How do we do this better? How do we make this the best Proposed Rule that we can?"

I think that the process involved, it's almost process-heavy, even though I hear some of the ideas of, "Could there be more?" But it's really designed to be supported by the New Mexico Interstate Stream Commission Staff, without being directed or

dictated by Staff, so that these Councils can get off the ground running and be equipped with what they need, and ask for what would be most helpful in terms of assistance in order to generate PPPs that actually take the development of ideas and get the proposed multiple funders for implementation.

I think there is more to come. I do think the Staff will be back before you not too soon after any Rule is adopted such that we can then continue to flesh out the guidance. At a minimum, they have met the statutory requirements, and I would argue at a maximum.

This Proposed Rule really does all that it set out to do and integrate as much from what was done before to build on prior efforts and really launch it.

With that, I ask that you adopt the Proposed Rule as Petitioned with the changes made in each of their

Testimony, which was identical and was included in their written Testimony. With these last subsequent changes that were just walked through before you today, I ask that the record be closed and that you now have the time at your discretion to meet and deliberate on it such that we can then get started with the next step. I thank you very much.

HEARING OFFICER ORTH: Okay. Thank you, Ms. Becker.

Is there anything else from anyone?

Commissioner Russell.

COMMISSIONER RUSSELL: I just want to be clear that although the record is closed and the document at this point, through the deliberations of the Commission there will be an opportunity to further amend it.

HEARING OFFICER ORTH: Yes, again, tweak it.

COMMISSIONER RUSSELL: Within the record, yes.

HEARING OFFICER ORTH: Based on the record, yeah.

COMMISSIONER RUSSELL: Thank you.

HEARING OFFICER ORTH: No wholesale rewriting.

Okay. Anything else?

Vice Chair Timmons.

VICE CHAIR TIMMONS: To clarify we have to adopt this Proposed Rule as we close the Evidentiary Hearing, or do we close it?

HEARING OFFICER ORTH: We close it.

VICE CHAIR TIMMONS: She asked for "... adopt..."; that's what I'm trying to clarify.

HEARING OFFICER ORTH: Oh, she's asking you to "... adopt..." it when you come together to deliberate.

VICE CHAIR TIMMONS: Okay.

HEARING OFFICER ORTH: Yes.

Other questions?

MS. HENNE: My name is Lisa Henne, L-I-S-A H-E-N-N-E, and I'm General Counsel for the Interstate

Stream Commission:

I wanted to make sure everybody understands that if we close the record now, everything you have before you is what you will be considering when we come back to deliberate, and Felicia will put together -- the Hearing Officer will put together her report.

If you recall, I asked you to refrain from ex parte communication, and I want you to please continue to refrain from that, so you cannot take additional information.

I know you all work with constituents in your areas, but when you come back to deliberate you have to deliberate only based on the record, not new information that you received. We cannot continue to put anything else into the record now.

The advice I gave you several months ago to avoid ex parte communication is still in effect because you don't want additional

information coming to you that's going to influence your decisionmaking, so we need to keep the decisionmaking based on the record only.

I don't know, Madam Hearing Officer, if you want to add anything to that based on your experience, but I wanted to make sure it is clear that when we come back to deliberate, you will be able to have this discussion and look at the record.

Now you can make additional edits if you wish to, but again, no more information will be coming in.

HEARING OFFICER ORTH: That's right, and I think we had this conversation at an earlier meeting maybe 2 months ago.

The appellate courts in New Mexico have reinforced that message in a couple of different ways that your deliberations have to be made on the record that was made and not things you kind of hear around the edges.

Any other questions?

From here we receive the transcript from Mr. Lee, I write a report, and your Staff and you choose a date on which you want to deliberate; I don't know when that will be. I don't imagine it could be before December just based on the timing here, but that is up to you as to when you would like to deliberate.

Again, I'm going to be listening very carefully during your deliberations. I won't be talking except maybe to draw you out a little more if you make a decision. If I'm not sure what the basis for your decision is I'm going to ask you, and then I'll write up a Statement of Reasons.

Other questions about the post-hearing process?

No.

Well it's been a real pleasure.

MS. BECKER: Madam Hearing Officer.

HEARING OFFICER ORTH: Ma'am.

MS. BECKER: I was going to clarify one thing, and that is Commissioner Timmons asked if there is a transcript of the deliberations. There will not be. The court reporter is here for the purpose of the Rulemaking hearing and the transcript is then what's available for deliberations, and the consummation of the deliberations will be in the Report identified by the Hearing Officer.

HEARING OFFICER ORTH: Okay.

Vice Chair.

VICE CHAIR TIMMONS: This is a process question:

We have to now vote or make a choice to close the record?

HEARING OFFICER ORTH: No, that is on me, and I'm about to say it.

VICE CHAIR TIMMONS: Okay.

HEARING OFFICER ORTH: Okay.

Would any Commissioner like to articulate a reason why we should leave the record open, except for the

transcript?

No.

All right. Thank you all very much. It's been a pleasure this week. I'll see you again when you choose to deliberate, and I'll be in touch before then with a Report.

Thank you all. The record is closed.

Thank you, Ms. Becker and all of the Staff, and Mr. Gaume and Ms. Taylor. Thank you to everyone who participated. Thank you.

(The proceedings adjourned at 4:54 p.m.)

WITNESS SIGNATURE/CORRECTION PAGE

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PAGE	LINE	CORRECTION	REASON FOR CHANGE

I, PARRY ANDREW ERDMANN, do hereby certify that I have read the foregoing pages of my Testimony as transcribed, and that the same is a true and correct transcript of the Testimony given by me on FRIDAY, OCTOBER 17, 2025, except for the changes made.

_____ _____

DATE SIGNED PARRY ANDREW ERDMANN

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PAGE	LINE	CORRECTION	REASON FOR CHANGE

I, SARA M. FOX, P.E. do hereby certify that I have read the foregoing pages of my Testimony as transcribed, and that the same is a true and correct transcript of the Testimony given by me on FRIDAY, OCTOBER 17, 2025, except for the changes made.

_____ _____

DATE SIGNED SARA M. FOX, P.E.

WITNESS SIGNATURE/CORRECTION PAGE

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Any other changes to your Testimony are to be listed below with a statement as to the reason for such change.

PAGE	LINE	CORRECTION	REASON FOR CHANGE

I, HANNAH RISELY-WHITE, do hereby certify that I have read the foregoing pages of my Testimony as transcribed, and that the same is a true and correct transcript of the Testimony given by me on FRIDAY, OCTOBER 17, 2025, except for the changes made.

_____ _____

DATE SIGNED HANNA RISELEY-WHITE

STATE OF NEW MEXICO

ENVIRONMENTAL IMPROVEMENT Board

IN THE MATTER OF PROPOSED NEW Rule 19.25.16 NMAC - Regional Water Security Planning, New Mexico Interstate Stream Commission Water Planning Program.) NMISC NO.: 25-01(R)

BEFORE THE HONORABLE FELICIA L. ORTH

FRIDAY, OCTOBER 17, 2025

9:00 A.M.

PUBLIC COMMENT AND

EVIDENTIARY HEARING VOLUME III

REPORTER'S CERTIFICATE

I, DAVID M. LEE, RMR, CRR, CERTIFICATE NUMBER 50391, NEW MEXICO CCR NUMBER 537, DO HEREBY CERTIFY that on FRIDAY, OCTOBER 17, 2025, the Proceedings in the above-captioned matter was transcribed by me, and that I did report in stenographic shorthand the Proceedings set forth herein. The foregoing pages are a true and correct transcription, all done to the best of my ability.

I FURTHER CERTIFY that I am neither employed by, nor related to, nor contracted with (unless excepted by the Rules) any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

DATED at Santa Fe, New Mexico, this 31st day of OCTOBER, 2025.



DAVID M. LEE, RMR, CCR
New Mexico CCR Number 537
License Expires: 12/31/2025

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