

ATTACHMENT A -- HEARING ORAL TESTIMONY

Hearing Testimony from the NMISC Water Planning Program

Andrew Erdmann, NMISC Water Planning Program Manager, addressed the history of water planning in New Mexico; the Program's targeted engagement with New Mexico's Tribes, Pueblos, Nations, and Acequias; next steps in the Regional Water Security Planning process; and suggested changes to the Proposed Rule based on comments received prior to the hearing. (Tr. Vol. 1, pp. 26-99) Mr. Erdmann's direct hearing testimony tracked closely with his full written testimony submitted October 1, 2025, and is thus not summarized in detail here. Please refer to his full direct testimony provided in writing. Testimony on questioning is below.

Exhibits related to Mr. Erdmann's testimony include his resume--NMISC Exhibit (Ex.) 1; the 1987 NM Regional Water Planning Act--Ex. 2; the 1994 NMISC Regional Water Planning Handbook--Ex. 3; the 2013 NMISC Regional Water Planning Handbook--Ex. 4; the 2023 NM Water Security Planning Act--Ex. 5; the 2023 NMISC/OSE State Water Plan 5-Year Review--Ex. 6; the 2022 NM Bureau of Geology Bulletin on Climate Change and Impacts on Water Resources--Ex. 7; the 2022 NM Water Policy and Infrastructure Task Force Report on 21st Century Water Challenges--Ex. 8; the Governor's 2024 50-Year Water Action Plan--Ex. 10; the 2022 Tribal Water Report--Ex. 11; the May 2025 WSTAC Ad Hoc Committee Report--Ex. 12; the NMISC Director's Response to WSTAC--Ex. 13; the 2022 Acequia Community Water Report--Ex. 14; the January 2025 Discussion Draft Rule and Guidelines--Ex. 15; the 7/17/25 Proposed Rule--Ex. 16; the 2020 OSE Water Use by Categories Report--Ex. 17; and the January 2025 issue of Mainstream Magazine--Ex. 18.

Sara Fox, Professional Water Resources Engineer and Program Senior Water Planner, testified on the public input sought and received in the Program's implementation of WSPA, and the contractors needed for assistance, including in-person and online engagement opportunities; open house events in each of the 16 previous planning regions, a robust communications campaign (Main Stream), published reports designed to assure transparency and accountability, the Discussion Draft Rule and Guideline development and input, and the outreach associated with the Proposed Rule public comment period.

Ms. Fox then discussed each subsection of the Proposed Rule in detail, including regional water security planning regions and sub-regions, the initial and ongoing planning periods, the composition of regional water security planning Councils, Council meetings, and input requirements; considerations for Councils during the planning process; criteria for approval of a regional water security plan; and outreach associated with the Proposed Rule public comment period.

Ms. Fox noted that she was setting out the way the Rule met three of the five WSPA requirements for an implementing rule: the boundaries and number of water planning regions in the state; the criteria for Commission approval of a regional water security plan with prioritized projects, programs and policies; and the composition of a regional water planning entity. The other two requirements relate to public welfare and water rights and are addressed by Mr. Chakeres.

Finally, Ms. Fox identified several revisions to the Proposed Rule based on comments received prior to hearing. (Tr. Vol. 1, pp. 100-167) Ms. Fox's direct hearing testimony tracked closely with her full written testimony submitted October 1, 2025 and is thus not summarized

in detail here. Please refer to her full direct testimony provided in writing. Testimony on questioning is below.

Exhibits related to Ms. Fox's testimony include her resume—Ex. 19; the November 2024 Brendle Group WSPA Engagement Report—Ex. 20; the November 2024 Brendle Group WSPA Observations and Considerations Report—Ex. 21; the 2024 Media Desk WSPA Summary Report—Ex. 22; the May 2025 Brendle Group Compilation of Input on the Discussion Draft Rule and Guidelines—Ex. 23; the 8/26/25 NM Register Notice of Proposed Rulemaking—Ex. 24; the 2025 Media Desk "Talking with New Mexicans" Advertising Summary—Ex. 25; the 7/3/25 Letter from NMISC to SBRAC requesting comments on the rulemaking—Ex. 26; and the 8/6/25 Letter from NMISC to the Legislative Council Service requesting comments on the rulemaking—Ex. 27.

Questioning of Mr. Erdmann and Ms. Fox

Mr. Erdmann and Ms. Fox were examined by the Commission as a panel. On questioning, Mr. Erdmann and Ms. Fox clarified the potentially different membership of regional and subregional Councils; the invitations to every municipality and county; the potential sponsorship of Projects, Programs, and Policies (PPPs); and anticipated ISC staff support for all subsections in the implementation of Section 14. (Tr. pp. 168-175, and 177-179 re: subregions)

Mr. Erdmann and Ms. Fox also spoke to trying to find the middle between community-driven and top-down planning; the Common Technical Approach; and the older Administrative Water Supply vs. the data in the Leap Ahead Report. (Tr. Vol. 1, pp. 180-184, 255-256)

Prioritization will be left up to the Councils, and considered within each readiness stage, not between stages. PPP lists are required to be updated every 5 years, at the plan halfway

point. Staff always wants projects moving forward. Section 15.C.5 allows a Council to consider the negative impacts of a PPP. Water quality and disaster/hazards are definitely appropriate topics for the PPP list. Changing 'may' to 'shall' in Section 15 is an option; they did not want to require considerations that were not demonstrable after the fact. (Tr. Vol. 1, pp. 257-265)

After the 1987 Regional Water Planning Act, most regions were finished planning long before 2008; Mr. Erdmann does not know who was first, only that Taos was last as a result of tackling "public welfare" in detail. The New Mexico Water Dialogue Planning Group was consulted and were real partners in developing this Proposed Rule. The 2013 Common Technical Platform saw a lot of pushback from grassroots groups; staff learned that they should involve participants earlier in the process, and that the general approach should be less top-down. The Tools and Templates on the Water Planning Mapping Dashboard include all previous plans from 1987 forward, but it is also a living data set; new data will be added once verified. The first three regions have not been selected yet, but they are looking at the areas where work is already underway. There is no limit on subregions; it is at the Commission's discretion. The San Juan Water Commission, which is a political subdivision, would be captured by Section 12.2(i), "existing regional water planning steering committees." (Tr. Vol. 1, pp. 266-275)

Language in the Rule about working with the Indian Affairs Department to develop the Water Security Tribal Advisory Council (WSTAC) was included very early, if not in the first draft. Tribal sovereignty, water rights, and water needs are considered in the Rule; you can't do regional water planning in New Mexico, with a seniority-based water system, without looking at the most senior water rights. Going forward, WSTAC has the responsibility of developing a set of operating principals; staff will shift their focus to working with their facilitator contractor to

develop these. This will not take into account the difference between adjudicated and unadjudicated water rights, or water rights going through settlement. A lot of specifics are not worked out yet. Staff anticipates that individual tribes in a region will have a seat on the Council, and WSTAC has an opportunity to review the overall Regional Plan and provide feedback. A plan will not be accepted if it violates an Indian water rights settlement, although depending on the Council it might make it to the Commission. The Rule does not require specific Tribal engagement for milestones, but one of the Tools and Templates in development is how to work with Tribes and those with senior water rights in the planning process. Nations, tribes, and pueblos are identified as Representative Members for the Councils, and will receive invitations for the region in which they reside. See Section 13.B, requiring notification to them of all opportunities to be involved. (Tr. Vol. 1, pp. 275-289)

It is neither intended nor expected that planning will change the nature of any water rights. One of the important criteria for creating a subregion is determining how that region's priorities will be integrated into the larger priority list, which should be done in advance. Staff understands that water planning is one more commitment, particularly in small communities, and that support will be important. The Tools and Templates are meant to be one resource. During the initial planning period there will be a lot of support, and hopefully it will be easier to update existing regional plans than to create new ones. They are also working on a big education piece and the Decision Support Tool for small water systems. They have also tried to assure that the timeline is not overly taxing, with updates of the PPP list only every 5 years. Although some regions are large, they hope to build trust and work better together going

forward. The Proposed Rule may need to be updated at some point; their hope is that the Guidelines can be more easily changed as necessary. (Tr. Vol. 1, pp. 289-300)

Mr. Erdmann confirmed that in Section 9, “hydrologically connected” implies that subregions are “contiguous.” Ms. Fox clarified that subregions do not have the same requirements as Councils. In Section 10.C, self-convened subregions in advance of a larger region existing is not contemplated because it would be very difficult to integrate their respective priorities. If a subregion gets the right people to the table, the agency will do their best to support them. Self-convened regions are effectively time-limited to the Initial Planning Period. The Program has a staff of four, and they expect to have contractor support for the regions as they get started; the development of the Tools is contingent on that. They expect to extend support with all available resources to the first 3 regions, then the next 3 and the 3 after that, with lessons learned and the development of additional Tools and Templates. In Section 12, there is no minimum number of Council members. Council decision-making is not dictated by the agency; Councils make that decision themselves, to preserve flexibility. (Tr. Vol. 1, pp. 301-312)

Staff did look to other states for examples of Council formation, and found some with 50 or more members in Colorado; even large groups were still able to come to consensus. It’s important that all interests in a region are represented. The Program will continue putting money into developing resources, data, and the best available science in support of planning. They do not want to be paralyzed by the current lack of data. Operating budget monies have been awarded in one-year increments; it is not clear yet how available monies will be divided among the Councils. They assume they will be able to acquire funding to continue the work.

Their intention is to develop a two-year process for planning, and have two options for all 9 regions, one of which will extend 6 years, and one for 4 years. (Tr. Vol. 1, pp. 313-318)

Staff has looked at regional planning processes in a number of other states. Colorado has a Stream Board where the regions talk with one another. Texas has a staff person assigned to each region, and they connect that way. If budgets allow for regional planning staff, the planners could share their knowledge. It is the Council, not staff, that can propose to subdivide regions; see Section 9.B. Assuring a holistic plan was one of the goals of rewriting it; the regions cannot plan to cover their shortages by pointing to each other for water—this was a flaw in the original regional plans. The Program does intend to have a process in the Guidelines for regions to apply for and receive funding in pursuit of their goals; as shown in the Discussion Draft. It is modeled after the Acequia and Community Ditch Infrastructure Fund (ACDIF) process, which is also handled by the agency, and should be a familiar process. (Tr. Vol. 1, pp. 318-327)

The diversity requirements applicable to Councils do not apply to subregions. It will be up to a subregion as to how to address that. In some cases, such as a Pueblo settling their water rights, there would be a clearly defined universe. Other cases may be more challenging, such as the folks in Estancia Basin preferring not to be in the same region as their southern neighbors. Making it prescriptive on subregions, though, means they become just like new regions, and lots more regions was shown earlier not to be workable. A Council will want to have oversight of projects proposed by a subregion. Although available information may not be perfect, conservation plans should not necessarily be delayed; data gaps inherent in a plan can be identified. The Leap Ahead Assessment is the foundation for planning for a drier, hotter future. (Tr. Vol. 1, pp. 328-332)

As to an artificial hydrologic connection such as the San Juan-Chama Project, although complex, it is still a hydrologic connection, and the contractors there will be subject to the same shortages, which may be a compelling reason to create a subregion of folks with access to the Project in the Middle Rio Grande, or Middle and Upper. The subregional process may not be necessary if they are sufficiently represented by non-voting members on a Council. Considering the number of entities along the Middle Rio Grande, it may be that five non-voting members is too few. Considering the possibility that a project in the Upper Rio Grande would have an impact on the Middle Rio Grande, the Program has no desire to change how priority dates or New Mexico water law works. (Tr. Vol. 1, pp. 333-340)

Subregions must coincide with the priorities of the larger regions, per Section 9.B.5, and would need to consider Tribal sovereignty, water rights, and the needs of the communities, per an edit suggested by the Pueblo of Laguna and adopted by the Program for the Proposed Rule. PPPs are required in the Proposed Rule to comply with state and federal rules, including water quality rules. Although Tribal water quality rules are not explicitly called out, it would make sense that they must be complied with as well, where a Pueblo or Tribe has treatment as a state designation. (Tr. Vol. 1, pp. 340-345)

Pursuant to Section 15.C, each PPP will be ranked relative to all other PPPs on the sub-list region-wide, and must fall into one of three readiness buckets. Additional criteria are deliberately not specified because each Council will have its own criteria for prioritizing their PPPs. Each Council determines this ahead of time in their Operating Principles consistent with Section 10.B.3. (Tr. Vol. 1, pp. 346-348)

Nathaniel Chakeres serves as General Counsel to the State Engineer and as Director of the Litigation and Adjudication Program (LAP); his testimony was offered in his capacity as LAP Director. Mr. Chakeres focused on the provisions in the Proposed Rule regarding public welfare, how those provisions carry out WSPA requirements, and how water planning intersects with the State Engineer's administration of water rights. [See Tr. Vol. 2, pp. 532-584]

With one exception, Mr. Chakeres' direct hearing testimony tracked closely with his full written testimony submitted October 1, 2025, and thus is not otherwise summarized in detail here. Please refer to his full direct testimony provided in writing. His testimony on the one additional issue and on questioning is below. His resume is Ex. 28.

The one matter not in Mr. Chakeres's pre-filed written testimony was a second suggested revision to the draft Rule, based on comments made at the hearing: a lot of concern was 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 Rule is intended to do that, and WSPA prohibits it. Public welfare does not prevent any water user from using their water right. Public welfare is considered only when there is a transfer, a change or proposed change. Since 1907, if somebody wants to change a water right, they need the permission of the State Engineer; there is no an absolute right to change. That's why public welfare is considered only when somebody changes a water right or files a new application rather than exercising an existing water right. He supports a revision in Section 6, "Objectives," a statement that reaffirms that nothing in the Rule is intended to affect or undermine any existing water rights, or a prior appropriation system, or to condone any practices like condemnation of water rights. (Tr. Vol. 2, pp. 563-565)

Mr. Chakeres confirmed that he was still proposing the first revision described in his testimony: in Section 16.A, changing "... may..." to "shall," pursuant to WSTAC's comment. This does not bind the State Engineer's determination. If it is a matter of public welfare, she will consider it and document her reasoning as required in 16. C. (Tr. Vol. 2, pp. 565-566)

The second proposed revision, an affirmation that the Rule does not supersede or violate State law regarding the role of the State Engineer or prior appropriation, and nothing that would permit condemnation of any water owner's rights, is preferable to eliminating Section 16 entirely. (Tr. Vol. 2, pp. 566-567)

WSPA includes language carried over from the 1987 Act, specifically prohibiting the construction of that Act to condemn or abridge water rights. See Section 72-14A-3. It is possible that a Council might submit a plan to the Commission that would endorse a water transfer, but they are not anticipating that any plan would constitute a proposed transfer itself. Any transfer proposed as part of a PPP could only happen through the permit process set out in statute before the State Engineer. (Tr. Vol. 2, pp. 567-569)

Eliminating Section 16 would be a missed opportunity to get 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 have been problematic and been rejected. The State Engineer needs input from actual water users and communities; this is just an effort to ensure that happens. As to why the Commission would impose a duty on the State Engineer, Mr. Chakeres stated that the State Engineer is by law on the Commission; these are related agencies. They want to get input on public welfare up front, otherwise, it may come in protests to applications, and Court cases, which may not result in better policy. (Tr. Vol. 2, pp. 570-572)

The Act requires two procedures regarding public welfare: one is Commission-facing, and one is Council-facing. Eliminating Section 16 would mean no required procedure for the State Engineer to consider public welfare values and the needs of future generations of New Mexicans. As to the fact that the State Engineer is not bound by public welfare statements, the State Engineer is the one confirmed by the Senate and appointed by the Governor, serving under State law, who must decide whether an application is detrimental to public welfare; it is not the Councils, which are not regulators and not writing binding policy. It would be contrary to the State Engineer's authority to make any input binding on her. (Tr. Vol. 2, pp. 572-575)

Communities may have different ideas of what public welfare could be. For example, we have communities that want to prohibit any transfers of water to cannabis cultivation; other communities are very concerned about smells from feedlots; and some communities want to protect the rights of all users to engage in agricultural use of water. There are communities which think that rivers and streams should be given more rights as healthy living entities, and places where people want to make sure there is enough flow for fishing. There are places where oil and gas keep the lights on and they do not want undue restrictions. These are all different values. It is not easy, without reasoned input from a Regional Water Plan, for the State Engineer to sort through it on an application-by-application basis. (Tr. Vol. 2, pp. 575-577)

Generally, the Office of the State Engineer does not allow for prioritizing one type of water use over another. The New Mexico Water Code is one of the strictest in the West in terms of being agnostic among different water uses; that is a conscious decision by our Legislature through the years. The Rule provides, on the Council-facing side, substantive feedback about what they need to be considering to be consistent with public welfare. There is

not a lot of detail in the Rule about when that needs to happen, and that is by design; it is not a one-size-fits-all approach across all planning regions. (Tr. Vol. 2, pp. 577-579)

If somebody tries to use the Proposed Rule to block a transfer, a savings clause prevents that. As the Director of LAP, he has seen litigation where parties want to define public welfare, and in some cases the Water Rights Division's view has prevailed and in some it hasn't. In a recent case the Pueblo of Sandia prevailed against the City of Rio Rancho, where the Pueblo's arguments differed somewhat from the Water Rights Division. The case is now on appeal. Compact compliance as a "statewide objective" was not the language used in the Tulla decision, but it was substantively analogous to public welfare. (Tr. Vol. 2, pp. 580-583)

Questioning of Mr. Chakeres

Mr. Chakeres agreed there is merit in soliciting statements from each of the Planning Regions about what public welfare might be so long as they understand essential points about compacts and prior appropriation law, etc., similar to what we heard earlier about creating a vision for the community or region; it's important to incorporate some of that sensibility into a regional plan to try and get at the larger context of the world we share. (Tr. Vol. 2, pp. 585-589)

As to whether the State Engineer currently considers public welfare statements from regional water plans, Mr. Chakeres stated that in every application that's reviewed there is a memo where they consider every statutory factor, with a written determination on public welfare, but they do not determine whether something is consistent with a public welfare statement, for example. He anticipates if we get public welfare statements into the process there will be more engagement on that issue in writing. If the State Engineer makes a decision

on public welfare, and one of the parties does not agree with it, they can always appeal in the context of an application. (Tr. Vol. 2, pp. 589-591)

New Mexico borrowed language from Nebraska to have a basis for denying water transfers out of New Mexico, which was one of the primary purposes of regional water planning. Mr. Chakeres repeated his description of the two procedures in the Rule related to public welfare. See Section 16. Staff does not want other work held up because of discussions about public welfare if the Councils are not ready to do that. Discussions will depend on the Region. For example, Tribal representatives believe they have already figured out the regional plan and it is their water rights settlement. He tends 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, and other water-using communities. Those groups want to effectuate the settlement they have worked so hard on. There are other regions without Tribes, or they have not reached a settlement yet, so it will vary. (Tr. Vol. 2, pp. 592-604)

Active Water Resource Management can include the enforcement of so-called "Shortage Sharing Agreements," mini-settlements among different parties where 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, they really want to see them succeed. They often result in much better outcomes for the water users, even the senior water users, than strict priority administration. (Tr. Vol. 2, pp. 604-605)

It is possible that a region cannot agree on a public welfare goal or statement; that is one of the reasons they did not want that to be a stopping point for the planning process. There

may be other things that regions can agree on and put into a regional plan. Regions can come forward with plans on topics that they can agree on. A region may have more than one public welfare statement if there are multiple subregions. If a whole region does not sign on to a public welfare statement, that might indicate to the State Engineer the reach of that statement. It is important not to make them binding on the State Engineer; otherwise, there is a significant risk of abridging water rights, and it has the risk of being a legislative determination. He wants to avoid an unpredictable process, and hopes that if we get these values in a considered way to the State Engineer, the State Engineer can make whatever decision she is going to make. Ultimately, if an applicant disagrees, they can go to District Court, but we have a better understood reason for defining an incredibly vague term, "public welfare," than we do right now, which is an ad-hoc litigation-based method. He agrees that Section 3 of the Act is critical. (Tr. Vol. 2, pp. 607-613)

On the direction given to the District Offices if regional Councils came up with public welfare statements, that's the State Engineer's call. Mr. Chakeres and the current State Engineer absolutely want the District Offices to look at public welfare statements that come in, but there is nothing that would require that. (Tr. Vol. 2, pp. 614-615)

Including "Active Water Resource Management" in the "Statewide Objectives" does not mean they will not support the development of alternative administration plans from Councils. The Act does not mandate that in the Rule, but it is absolutely their goal that the planning process support the development of alternative administration plans. (Tr. Vol. 2, pp. 616-619)

Mr. Chakeres has not been thinking about public welfare statements as a "Policy" under the PPPs; a policy would be more specific—capping transfers, for example-- while a public

welfare statement would be more aspirational, as a thing that needs protecting—maintaining streamflow, for example. Public welfare is to be considered by the State Engineer in addition to impairment of water rights. Whatever the Legislature meant by "public welfare," it meant something different from and in addition to impairment of water rights. A Council may struggle to agree on shared values for public welfare; that's part of the exercise and part of the mess of being humans in this world. He agrees that legally, if a region has stated a public welfare value, that would be given some weight.

Still, 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. A Tribal water right will never come before the State Engineer on an application; they do not have the jurisdiction to govern such changes, regardless of whether the water rights are settled, adjudicated, or not yet settled or adjudicated. He is confident the Proposed Rule does not impair any Pueblo or Tribe's prior and paramount water rights. (Tr. Vol. 2, pp. 621-632)

On re-direct examination, Mr. Chakeres agreed that the Act is organized by the "3 Cs," "Composition; Consideration; and Criteria." Under "Consideration" the Councils shall consider public welfare values. The "Criteria" section requires that Councils shall document how public welfare is considered, see Section 15(A)(6), previously Section 14(A)(7). The Office of the State Engineer does not define public welfare because it is too big and broad a concept. Getting input from the regions will help guide that decision-making; there will still be debate about what "public welfare" means as a consequence of the permitting statutes. It would likely be an ad-hoc litigation basis rather than a more reasoned consideration by experts if we do not have more input earlier. In each of the nine statutes mentioned in Section 16, it is the State Engineer

who must consider the public welfare of the state, and weigh the relevant regional public welfare value in the context of the state's public welfare. (Tr. Vol. 2, pp. 633-639)

On further questioning by the Commission, Mr. Chakeres stated that the Act does not require a public welfare statement; it suggests that issues and concerns regarding public welfare be communicated to the Commission. Different regions may approach that differently. Sustainability is deeply and closely related to public welfare; he does not believe they are co-extensive. They did look closely at the consent request from WSTAC, which had not been framed in terms of including a consideration of public welfare at critical stages; they will consider that suggestion again. (Tr. Vol. 2, pp. 640-644)

Hannah Riseley-White is the current NMISC Director. She testified regarding the NMISC mission and planning mandate, how WSPA and the Proposed Rule present a new and necessary approach to regional water planning in New Mexico, statewide objectives, WSTAC's unique role, criticisms of the proposed Rule and process, the opportunity to plan comprehensively and collaboratively, and suggested changes to the Proposed Rule based on comments received. (Tr. Vol. 3, pp. 840-895) Aside from the statements set out below, Director Riseley-White's direct hearing testimony tracked closely with her full written testimony submitted October 1, 2025, and thus is not summarized in detail here. Her resume is Ex. 29.

Director Riseley-White has worked at the ISC for just over 11 years, as Director or Deputy Director for five. She has 25 years' experience in resource and program management. Her professional career started as a community organizer in New York City; that experience taught her that without input and buy-in from the community, you do not have a successful outcome. (Tr. Vol. 3, pp. 840-848)

She echoes the sense of urgency expressed by the two previous ISC Directors who testified, Mr. Miller and Mr. Gaume. The Leap Ahead Report was a wake-up call regarding the significant challenges we are facing as climate change impacts our water and resources. Part of what drives her in the work is a deep care for New Mexico, a recognition that water touches on everything we do, and a concern for the future we are leaving for the next generations, including her 6 year-old daughter.

The Director appreciates the Commission's thoughtfulness in coming to the issue, and emphasized that what is in front of them is the Rule. WSPA also calls on them to craft guidelines, which will come soon as they learn and implement the planning process ahead, and know what the Commission includes in the Rule to inform the guidelines. Director Riseley-White appreciates the comments from other state agencies and their desire to provide input in the planning. The Act calls on the guidelines to speak to state agency collaboration in the planning process. (Tr. Vol. 3, pp. 880-882)

As a person with a technical background, the Director is especially excited about the components of the Tools and Templates that will help provide the scientific basis for the Planning Regions, including the map-based dashboard. We can keep adding new information to the map-based interfaces. She is also excited about the aquifer-mapping at New Mexico Tech and the Council organizing principles. (Tr. Vol. 3, pp. 886-887)

We will know that the Rule is successful if we see communities increase their ability to respond to water resource challenges on the ground, which requires broad engagement and better education statewide regarding water issues. (Tr. Vol. 3, pp. 891-892)

Questioning of Director Riseley-White

Considering the great diversity in the types of water available and the kinds of uses across different counties and regions, Director Riseley-White agreed that the question of prioritization of PPPs is the \$100 million question; they have had a lot of staff discussion on this issue. Implementation of the Rule and the Act requires some kind of prioritization. The previous round of regional plans included a rollup of 500 PPPs with zero prioritization. The Legislature had no idea what to do with that, so they did nothing. They are interested and excited about the idea of prioritized PPPs coming out of these plans. The Program is proposing revisions that are, in part, responsive to a lack of clarity and how the Proposed Rule was worded related to PPP lists. There will be distinct lists based on those readiness categories, and PPPs can point to other PPPs as being important to move in parallel. She shares the Commission's concern that with one ranked list we may lose people because they do not think that their thing will ever make it to the top. The assignment is to strike the right balance of being able to reflect priorities within the 3 lists such that they can move.

Inevitably, a subregion could have their own list reflected in a plan, but the Rule says each Council must create the 3 PPP lists, so the plan for the region would still have to have sort the 3 lists. There are some questions we cannot answer yet. (Tr. Vol. 3, pp. 896-904)

Director Riseley-White agreed that there may be a tension between the concepts of "equity" and "readiness" in prioritization of PPPs. She is hopeful that the additional Rule revisions being offered help provide clarity. 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, from communities that would have difficulty getting them shovel-ready. This will allow them to rank up at the top

of the list on par with items that are shovel-ready. Having each list ranked separately provides an opportunity for things that are at an idea stage to get prioritized instead of getting buried. The precise intent of the 3 lists was to avoid consistently only prioritizing shovel-ready items. The list of idea-stage or scoping-stage items 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 to the "PPP" terminology, they spent quite a bit of time trying to eliminate it, and ended up carrying it over to make sure that people are not just thinking about projects. That is what will help us tackle the challenges we are facing, not just focusing on infrastructure projects. Those are important, but we also need to consider programs for water conservation initiatives or shortage sharing initiatives. (Tr. Vol. 3, pp. 904-914)

Public welfare is a broad term, and should both encompass statewide objectives and consideration of the needs of future generations. The Director agrees that nothing in the Rule makes a determination of public welfare; only the State Engineer can do that. The only thing the Rule does is provide a structure for regional Councils to identify public welfare values; it doesn't even require a public welfare statement, although the State Engineer will consider it if one is submitted. Regions need not complete that statement before moving into a planning process; they do not want that to be a roadblock. (Tr. Vol. 3, pp. 914-919)

The additional revisions being proposed by the Program do include language responsive to the State Forester, and her concerns about watershed health and source water protection.

As to what the Program envisions as a data set when the regional Councils come together in the coming months, Director Riseley-White stated that the intent with the Tools and Templates was to invest early in working with New Mexico Tech on aquifer summary sheets

and the 2-D aquifer map because of how much New Mexico relies on groundwater. Similarly, they will work to prepare information related to surface water availability, trends, and forecasts they have seen in the Leap Ahead, looking into the future. (Tr. Vol. 3, pp. 919-922)

Regarding the statutory mandates beyond developing the Rule and the Guidelines, the Director now has a greater appreciation for how statutes get revised as they move through the legislative process, including 11th hour edits. The Program has struggled with how to organize the Rule, and moved some of the items called for under "Guidelines" into the Rule, based on feedback from the Discussion Draft, particularly the public input requirements. There could also be things in the Guidelines beyond what is called out specifically in the Act, and the potential to have documents in addition to the Rule and the Guidelines, such as a handbook or guidance document so that people could have one thing to look at and understand how the pieces fit together. The Program intends to bring the draft Guidelines to the Commission to provide an opportunity for public and Tribal input; the Commission would ultimately finalize them. They do utilize Guidelines elsewhere, including the Acequia and Community Ditch Infrastructure Fund. That entire process is implemented through the Guidelines that were crafted with a lot of input from the New Mexico Acequia Association. That collaborative process was really helpful, and then the Commission approved those Guidelines. (Tr. Vol. 3, pp. 923-930)

The funding process for planning would definitely be addressed in the Guidelines; that is also called out in the Statute. Statewide objectives are outlined in the Proposed Rule, but there may be a need for a Tool or Template that would help further explain what is meant by those and what would be needed for compliance and furthering their implementation. "Alternative administration" may not be needed in a Guideline, but she welcomes Commission's thoughts

on that. To the extent a Region identifies alternative administration as a solution to the water management challenges they are facing, the State would need to support development of that alternative administration, both from her Office and the Office of the State Engineer.

As proposed by Senator Lanier and Ms. Taylor, she does not see an issue with including a Severability Clause, although she is not an attorney. Director Riseley-White does believe that the Rule is simple enough to move forward, and enough to satisfy the Act at this point. As Ms. Fox said, it creates a "scaffolding," structural support that allows for flexibility across the regions in terms of their capacity, interests, values, and evolving data. The next step is for the Commission to decide how to proceed. (Tr. Vol. 3, pp. 930-936)

The Director appreciates the efforts of WSTAC, and how valuable it was to engage with them for over a year. The Program does have further revisions to propose, responsive to some of the additional comments during the hearing. She wants to emphasize the Sovereign-to-Sovereign relationship that the State has with the Tribes. WSTAC is not intended to supplant the true Government-to-Government consultation that the State conducts with Tribes, Pueblos, and Nations. WSTAC has provided an opportunity for much more ongoing communication, which has resulted in better understanding of interests and concerns in both directions, and has been imperative in developing the Rule and the Guidelines. It will continue to be very important moving forward. (Tr. Vol. 3, pp. 937-942)

As to how to engage the local understanding, knowledge, and wisdom, of the Pueblos and Tribes, some of which would go back thousands of years, Director Riseley-White stated that in the list of Tools and Templates under development, there is one intended to help support regions in incorporating and engaging with traditional ecological knowledge. They would like to

workshop it with WSTAC. Similarly, a Tool or Template for regional Councils about how to understand acequias and how to engage with them would be valuable. We are fortunate in New Mexico to have a rich heritage of water management in communities to learn from and build on as we move into the future. It is incumbent on all of us to think about building local capacity. Commissioner García and others have highlighted the difference between people who will participate in this process because they are paid to by the entities they work for, and those who have a lot at stake and are participating as volunteers while balancing their own farms and families. It is important to make sure that we are engaging sufficiently those rural communities that may have more limited capacity to engage, and thinking through how to provide support such that those interests are fully represented. (Tr. Vol. 3, pp. 942-945)

Director Riseley-White agreed that the Middle Rio Grande Council could have 100 members, and that without that membership, there will not be a functioning Council. Ms. Fox described the planning processes they evaluated in other states like Colorado, where there are Roundtables with that kind of significant representation. It does present a challenge; that challenge can be overcome by providing the right organizational principles, with more limited participation like a Steering Committee, but it is a valid concern that warrants consideration. Although many representatives "shall" be invited, nothing stops us from moving forward if that invitation is not acted upon. As to whether there is anything in the Rule that could be moved to the Guidelines and still comply with the Statute, the Director stated that they had received feedback from the Discussion Draft, particularly related to public participation in the planning process, that warranted including it in the Rule. As Mr. Trujillo from EMNRD noted, Rules

should be very clear such that they cannot be misinterpreted. The Guidelines are adopted by the Commission as a policy document; the Rules are a legal document. (Tr. Vol. 3, pp. 948-951)

Director Riseley-White agrees that engaging in a more informal and ongoing way with acequia and land grant communities would absolutely be beneficial. They had not codified that in the Rule like WSTAC, based on their sovereignty, due to concern about proliferation of special groups. It is worth looking at the statute that establishes the Acequia Commission because it advises the Governor, the Legislature, and state agencies on issues that impact acequias. The Land Grant Council statute provides a similar framework. She believes there would be an opening to use the Rule to include, or point to Guidelines that include, something like "The Commission will consider these things, including creation of an advisory process or advisory body for acequias." (Tr. Vol. 3, pp. 953-958)

The Discussion Draft tracked sequentially with the Act and a lot of people found that confusing. It was challenging to structure the Rule such that it is intuitive and easy to follow, so it was restructured to distinguish between the Initial Planning Period and the Ongoing Planning Period, because needs will be different in those two periods. When it comes to public welfare, Mr. Chakeres' Testimony was about how the State Engineer would utilize any regional statements on public welfare; that is the intent of Section 16. But there are multiple reasons for a Council or region to have a discussion around public welfare, and avoiding a roadblock on the way to getting a plan done is very important. (Tr. Vol. 3, pp. 959-964)

As to the complexity of the Middle Rio Grande Region, and looking at the Rio San José Region, and whether it makes sense to look at the stakeholders going through settlement as a region or a subregion, Director Riseley-White acknowledged multiple distinct challenges--not

only are there a lot of water users, it is a big region with a large diversity of water interests. Further, planning will occur in regions with Indian water rights settlements underway. She believes it is still worthwhile to have the bigger regions with all those parties represented, and that a planning process can reach successful outcomes. It will be messy, but it will be important to facilitate an effective process, and they need to prepare for that. Regarding the Indian water rights settlements, she does not know that they will have any way to delineate all the regions such that they recognize all potential boundaries that come into play; that is a significant challenge. The plans should further implementation of those settlements; they see them as global resolutions of water issues in those basins. We should not wait until we have all the data, or until that settlement is complete. They have put forward what they think is the best possible delineation of the regions, and are prepared to work with the Advisory Roundtable and others on how to create a process that is as effective as possible. (Tr. Vol. 3, pp. 972-976)

It is possible that there will be Pueblo or Tribal representation in two different Regions. The Program had feedback from Tribes saying that they wanted to make sure that they would not be split across regions, and from other Tribes asking to be sure to be included in multiple regions. The newest revisions do not propose any further adjustments to the delineations of the regional boundaries. (Tr. Vol. 3, pp. 976-977)

Public Comment and Other Testimony

Anjali Bean, Senior Policy Advisor with Western Resource Advocates, urged the Commission to distinguish between ‘public welfare’ and ‘the needs of future generations.’ See also WRA written public comment on Section 15A of the Proposed Rule (beginning Bate-stamped p. 01787). The consideration of the needs of future generations should include a

thorough analysis of long-term sustainability and cumulative impacts of a proposed Project.

(Tr. Vol. 1, pp. 185-191)

On questioning, Ms. Bean confirmed that they were requesting a set of specific steps or procedures and guidance regarding prioritization based on long-term sustainability. They were not able to do substantial outreach to the Tribes given the time available, but they do not want the term ‘public welfare’ to have a limited definition. (Tr. Vol. 1, pp. 192-203)

Teresa Seamster, National Water Sentinels Representative of the Sierra Club Rio Grande Chapter, has been responsible for water testing on the Upper Pecos River for 6 years. She submitted a lab report during her comment, a PFAS assessment from earlier in the month, showing non-detectable levels. This baseline assessment for PFAS was prompted by the recent announcement about allowing mining in the national forest. (Tr. Vol. 1, pp. 205-208)

Don Bustos, owner of Santa Cruz Farm, wants to assure that small farmers have a voice in the water planning process. Acequia associations, farmers, and ranchers should be included in a meaningful way, and have the financial and technical resources available to articulate their needs. He has volunteered as a Mayordomo, a Commissioner, and a member of the Santa Cruz Watershed Group. Creating regions without financial support will not do any good. On questioning, Mr. Bustos stated that the technical data necessary for effective participation would include the hydrology of the acequias and watershed, how to minimize the impact of floods, and the effectiveness of dams. They grow 72 varieties of produce year-round using only passive solar energy for the last 20 years, and supply school districts with vegetables in Santa Fe and around New Mexico. (Tr. Vol. 1, pp. 209-217)

Rudy Montoya, with the New Mexico Acequia Association (NMAA), noted that they had submitted written comment, and emphasized that rural water rights and needs should be considered; the 9 ISC regions should overlap with or contain the Council of Government Regions to improve the capacity available for implementing plans. (Vol. 1, pp. 218-220)

Monica Rodriguez, NMAA Community Outreach Coordinator and New Mexico Land Grant Councilor, stated that the Association generally supports the Proposed Rule, but it is important to include the voices of rural communities. The Rule should include an Acequia and Rural Water Security Working Group, and overlap the ISC Regions onto the Council of Governments. The Rule should also include funding for planning, and opportunities for the public to participate in the process. They support including a member from the Mutual Domestic Water Consumers Association and a Community Regional Water System representative. On questioning, Ms. Rodriguez affirmed that they include community ditches in their support, although ditches may be legally distinct from acequias. (Tr. Vol. 1, pp. 220-225)

Pam Roy, representing Farm to Table and the New Mexico Food and Agricultural Policy Council, noted that they had submitted written comment, and that water is the most important consideration for our land and food production. Food production in the state has increased through the work of a broad coalition, and those supplying the food care very much about water resources. Produced water should not be applied to the ground. (Tr. Vol. 1, pp. 226-229)

Dr. Aidan Manning, who has a Ph.D. in Watershed Hydrology, spoke for New Mexico Wild, which submitted written comment on the Proposed Rule in conjunction with several other environmental conservation nonprofits. Dr. Manning thanked ISC staff and is in favor of approving the Proposed Rule with a few changes. PPPs should be based on the needs of the

region, and not just readiness. Council consideration should require impacts of plans; Section 14.A should use the word “shall” rather than ‘may.’ In Section B, if insufficient data prevents full consideration, this could be documented. Similarly, in Section 15, the Rule should require rather than allow Councils to document key considerations for each PPP. Otherwise, the ISC cannot fulfill WSPA mandates. On questioning, Dr. Manning affirmed that it should be clear that prioritization is up to the region, and then PPPs sorted into readiness groups. (Tr. Vol. 1, pp. 230-242)

William King spoke as a larger famer from the Estancia Basin, and would like to see a water right farmer or rancher on the Council for certain, not optionally. They do not have a river or acequia, but they do have a land grant. (Tr. Vol. 1, pp. 244-245)

Mary Trujillo Mascarenas--rancher, Chair of the New Mexico Acequia Association, and member of the Santa Barbara and Las Trampas Land Grants—endorsed the comments made by Rudy Montoya and Monica Rodriguez. It is important to protect our clean water for drinking and irrigation. (Tr. Vol. 1, pp. 247-249)

Howard Hutchinson, from the San Francisco Soil and Water Conservation District, is not comforted by the testimony so far and isn’t sure their written comment is in the record. The regional water plans and PPPs seem to ignore the prior appropriation doctrine. Adjudication is New Mexico’s method; conservation and public welfare should only be considered in the context of impairment. Their written comment identified 7 problems in determining public welfare; they are concerned that long-range plans and projects that require state funding based on regional water plans will not get adequate priority. We need to focus on regions or subregions that are hydrologically connected. (Tr. Vol. 1, pp. 251-253)

Thomas Paterson is a Catron County cattle rancher and President-elect of the New Mexico Cattle Growers Association. The Association reviewed the draft Rule and became concerned that it would intentionally or unintentionally disrupt traditional water uses in agricultural and rural New Mexico by favoring urban users. They submitted written comment on September 21, and proposed 9 changes, none of which were adopted by Program staff in the hearing. The draft Rule is not ready for adoption. The Rule should be transparent as to the criteria by which projects will be evaluated. The Association has been promoting agricultural water resilience before the Legislature. That program was wildly oversubscribed, and the one criticism was that the criteria were not known. They would prefer to see the criteria in the Rule as opposed to in the Guidelines, but it should be written somewhere. Mr. Paterson is also concerned that rural people do not have paid staff or a funding source to devote the volunteer hours necessary to participate, except for Howard Hutchinson. He asks why we even need this Rule; can't projects be developed without the structure it imposes? (Tr. Vol. 1, pp. 351-358)

Governor Charles Riley, of the Pueblo of Acoma, acknowledged many Tribal leaders present. The WSTAC, its Ad Hoc Committee, and ISC staff have spent many hours together discussing and refining the Proposed Rule to reflect the intent of the WSPA and the shared responsibility to protect water. The Pueblo of Acoma strongly supports the recommendations submitted by the Committee on September 27, 2025. The Proposed Rule must generate meaningful and equal participation of Tribal governments in regional Councils. As currently written, they can be easily outnumbered by municipal and county irrigation district representatives and at-large members. As a matter of sovereignty, when Councils make decisions that may affect Tribal water rights, lands, or data, the decisions must require the

consent of affected Tribal governments, as required in WSPA, Section 72-14A-14B. In addition to a clear mechanism for Tribal consent, the Rule must require engagement with Tribes and WSTAC at meaningful stages of the planning process, including planning initiation, before publication of any draft plan, and before the final plan is submitted to the Commission. Each plan should include Tribal comments, agency responses, and unresolved concerns; otherwise, Tribal participation risks being symbolic rather than substantive. (Tr. Vol. 1, pp. 359-364)

As for Regional boundaries, we need distinct Planning Regions that reflect existing water right settlements. The Rio San José Basin is among the most water-stressed in the State. Upstream groundwater development has diminished its flow to a fraction of what once sustained their lands, people, and fields, and decades of uranium contamination 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 to negotiate the Rio San José Indian Water Rights Settlement. This Settlement is in every practical sense a Regional Water Plan based on science, consensus, and cooperation. It establishes administrative procedures, funding mechanisms, and coordination processes among all the governments and communities in the basin. 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 realities of the basin. It will ensure that the regional planning priorities and funding decisions directly support

the implementation of the settlement and uphold the State's commitments. Larger administrative regions cannot adequately develop a regional water plan that addresses the specific conditions and needs of the Rio San José Basin. (Tr. Vol. 1, pp. 364-367)

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. Section 72-14a-4C(9)(b) of WSPA 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. 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. 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. (Tr. Vol. 1, pp. 367-370)

On questioning, Governor Riley clarified that documented consent from a Pueblo Governor is important because this will be a government-to-government relationship. Written summaries between the agency and the Pueblo are important because verbal statements are typically forgotten. Acoma, like most Pueblos, is agriculturally-based, so both water quantity and water quality are important. They should not be part of a larger Region; the water there is short and has been over-appropriated for years. It would be devastating if anything were to

compromise the water settlement. No person can speak for the Pueblo of Acoma without Acoma's consent. (Tr. Vol. 1, pp. 370-381)

Lieutenant Governor Charles Jojola, for the Pueblo of Isleta, stated that for generations the Rio Grande has sustained their way of life. It provides water that nourishes their fields, traditions, and people. 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 their water rights are only partially recognized and limited to certain prior and paramount uses defined nearly a century ago. Meanwhile, aquifers are declining, river channels are shrinking, and the climate is growing hotter and dryer. We must plan for the future.

Isleta and its sister Pueblos in the Middle Rio Grande Basin have been working closely with the State of New Mexico and the U.S. to negotiate a settlement of Pueblo water rights. The settlement is still under development, will resolve longstanding legal questions, and create a framework to benefit all water users, Tribal and non-Tribal. It is critical that the regional planning process be structured to support, not complicate, that effort. (Tr. Vol. 1, pp. 382-384)

Isleta appreciates the Commission's work to implement WSPA and to establish the WSTAC, and its intention to strengthen water planning across New Mexico. The Pueblo fully supports the written comments and recommendations submitted by WSTAC. To meet the Act's goals to protect sovereignty, honor federal law, and ensure lasting water security, the Rule must go further: first, any decision that affects a Pueblo, Tribe, or Nation must require that community's consent. Second, meaningful engagement must occur at defined stages of the

planning process: at the start of plan development when the framework is being shaped; before a draft plan is released for public comment; and 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 unresolved issues. (Tr. Vol. 1, pp. 385-387)

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, which causes increased depletions and adversely impacts water supply and the environment. The Middle Rio Grande is already over-allocated, and new depletions exacerbate scarcity. Pueblos hold senior unqualified water rights that risk impairment when junior upstream depletions are approved. The river's water quality may also be adversely affected by these transfers, limiting the Pueblo's ability to use the water. It is critical that the Pueblo and other water users between Cochiti and Elephant Butte Reservoirs can protect the water in the Middle Valley. The current regional boundary will hamper that ability. 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. (Tr. Vol. 1, pp. 387-392)

On questioning, Lt. Governor Jojola confirmed that Isleta Pueblo has treatment as a State for water quality. They have stricter regulations than the City of Albuquerque does. This summer there were quite a lot of problems with E. coli in the Rio Grande, because there was no flow in the river. The only flow to the Pueblo was through the drainage ditches on each side of

the river being released by a treatment facility in the South Valley. They have to find other water to use in their ceremonies now. Only Pueblo leadership has the authority to speak for the Pueblo of Isleta. The subregions in the Proposed Rule do meet some of his concerns. They are suggesting that the Jemez y Sangre boundary be explicit in the Rule. Being in a very urbanized region could impact the Pueblo if there isn't government-to-government meaningful consultation; Albuquerque is the largest city in the state, and the homeless people do not have ready access to the restroom. All that flows down into the drain system and eventually makes its way into the river. (Tr. Vol. 1, pp. 392-398)

Lt. Governor Jeff Suina spoke for the Pueblo de Cochiti, one of six Middle Rio Grande Pueblos. Their livelihood and cultural survival depend upon their ability to use water. Their senior water rights must be taken into account by the water planning Councils and protected into the future. They support the recommendations made by the WSTAC Ad Hoc Committee, and offer additional comments in support of meaningful Tribal engagement. They want to know how future water right settlements will be considered in the regional water plans.

On questioning, Lt. Governor Suina stated that Cochiti Lake Reservoir was created without their consultation, in the name of public safety and the greater good, but it has affected their culture, identity, and land for the worse. They wonder if the water is even safe to drink; it is a painful issue. No one besides Pueblo leadership can speak for Cochiti. (Tr. Vol. 1, pp. 399-408)

Governor Michael T. Sandoval spoke for the Pueblo of Felipe, which lies at the foot of Black Mesa along the Middle Rio Grande. They and their ancestors have relied on the waters for ceremonies, for agriculture, and for life itself. The river is a living being and part of the natural

and spiritual order that sustains their people. Over the last century the river has changed in profound ways. It has been divided, dammed, and constrained with decisions that often excluded the Pueblos. Their water rights remain only partially recognized, limited to certain agricultural and domestic uses that Congress acknowledged nearly 100 years ago. Meanwhile, the shared aquifer declines, and a warming climate brings greater uncertainty. The Pueblos have been working with the State of New Mexico and the U.S. to negotiate a comprehensive settlement of water rights. It is essential that the regional planning process be designed from the outset to accommodate and integrate the terms of that settlement. (Tr. Vol. 1, pp. 409-412)

The Pueblo of San Felipe fully supports the recommendations submitted by WSTAC, but the Proposed Rule must be strengthened in several key areas: San Felipe is concerned that the proposed regional boundary for the Middle Rio Grande Council combines the Middle Valley with water-thirsty areas in the north, ignoring both hydrologic and legal realities. Transfers upstream to meet development demands have steadily increased; those depletions have reduced flows to the water supply and ecosystem upon which their communities depend. The consequences are far-reaching with lower river stages, declining water tables, loss of the Bosque and habitat, increased stress on endangered species recovery, and greater uncertainty for Pueblos and non-Pueblos alike. 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. 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 additional criteria requiring that each proposed subregion take into account the original water security Program, Tribal sovereignty, Tribal water rights, and the needs of Tribal communities. (Tr. Vol. 1, pp. 412-417)

The Proposed Rule allows for one representative from each Pueblo, Tribe, or Nation on the original Council; this is not sufficient. 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. 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.

On questioning, Governor Sandoval confirmed that no one outside the Pueblo would understand the internal considerations of water needs and water use, particularly religious use, which is not appropriate to share. All final decisions lie within the Tribal Council of the Governors. Consultation requires face-to-face discussion. (Tr. Vol. 1, pp. 417-424)

Joshua Mann, Water Counsel for the Pueblos of Isleta and San Felipe, is also a member of the WSTAC Ad Hoc Committee. WSTAC represents an effort to bring together all the Pueblos, Tribes, and Nations in New Mexico to provide a collective perspective on state water planning. His comments reflect broad collaboration and consensus where possible. It is also important to note that several Pueblos, Tribes, and Nations elected to opt out of the WSTAC Comments, and that decision should be respected as an exercise of their sovereignty. He appreciates the progress made so far, but the Proposed Rule still needs some adjustments which will make the Rule stronger and more consistent with the letter and intent of the Act. The first issue concerns representation: while the Rule provides for one 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, such as LiDAR data or aerial imagery. (Tr. Vol. 1, pp. 425-431)

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. The WSTAC recommends that the Rule require engagement at 3 key points: at the initiation of the planning process, prior to the publication of a draft plan; and 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. WSTAC appreciates that the ISC attempted to address concerns about the size and alignment of the proposed regional boundaries by incorporating the subregion mechanism. As currently written, however, it does not 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. WSTAC recommends that the ISC establish additional full planning regions. One would be the Rio San José Region, one the capital region like the Jemez y Sangre, and then an Upper Rio Grande Region. Each of these regions should have independent authority to develop and submit their own plans. In addition, WSTAC recommends that the Rule add an explicit

criterion for establishing these subregions and requiring consideration of Tribal sovereignty, Tribal water rights, and the needs of Tribal communities.

The Rule should explicitly recognize and prioritize projects and programs that implement Indian water rights settlements. These settlements are binding legal instruments that require committed multi-decade infrastructure and funding commitments. The current language in the Rule is advisory and does not require regional Councils to document or prioritize these projects. WSTAC recommends amending Sections 19.25.16.9B, 19.25.16.14C, and 19.25.16.15, to make sure that settlement implementation is a required consideration in all regional planning processes. (Tr. Vol. 1, pp. 425-439)

Dabi Soledad Garcia works with the New Mexico Acequia Association as the Promotora Cultural and is a Commissioner on the New Mexico Acequia Commission. Water is the lifeblood of acequia communities in New Mexico, and should be protected as a community resource. She commends the ISC for looking for ways to affirm cultural values, and for thinking about how communities govern themselves. The Association submitted written comments, and she stressed that the 9 regions in the Rules should overlap and be contained within the Councils of Government. It is important to have overlapping technical assistance, such as free grant writing, planning, and project supplemental services. We need substantive information from communities represented within the bodies that will be created. (Tr. Vol. 2, pp. 458-463)

Serafina Lombardi is a mom concerned about water for future generations, a Commissioner on the Acequia de los Martinez Arriba in Chimayo, New Mexico, and a member of the Executive Committee of the regional Acequia Association Board. They are actively engaged in regional water planning on the acequia thanks to support from the New Mexico

Acequia Association, where she is the Program Director. She supports NMAA's written comments, and wants to highlight that those comments were created by acequia leaders from across the State coming together multiple times to share their experience and insights. The ISC should form an Acequia and Rural Water Security Advisory Committee to ensure that rural issues are lifted up and to reach underserved communities for engagement. Also, there was mention of funding which has not carried over into the Rule. Funding to support implementation really increases the motivation of the community to engage and understand that there will be an impact from their efforts, and a beneficial outcome in the end. Acequias and mutual domestic water systems are serviced by volunteers, and they have very little access to funding. (Tr. Vol. 2, pp. 463-470)

Chili Yazzie, from Shiprock, principally works with a farmer collective. They are traditional farmers who farm along the San Juan River. There are six river-based farming communities served by two different irrigation projects, the Upper Fruitland Irrigation Project and the Highbak Irrigation Project. Their waters are sacred. He generally supports the Rule, but he asks that language be added to provide access to any discussions of water into the future for representatives of the rural communities, the farmers and the ranchers who understand water, and use it in the way that they need to. We must give respect and honor to our sacred waters, and protect them for all our grandchildren into the future. (Tr. Vol. 2, pp. 471-475)

Alfredo Montoya, from the Village of Alcalde, is the President of the Mutual Domestic Water Consumers Association, the President of the Acequia Alcalde, and the President of the Regional Acequia Association in the Upper Rio Grande. He is also a Commissioner and Vice Chair of the New Mexico Acequia Commission. There are over 700 Acequias throughout New

Mexico, hundreds of Mutual Domestic Water Consumer Associations, and dozens of Land Grants. Almost all these entities are found in rural New Mexico, and together they represent hundreds of thousands of New Mexico residents. Almost all the leaders are unpaid volunteers; there are hardly ever any paid engineers, hydrologists, or other professionals to speak on behalf of these entities. The result is that their concerns are not considered. To give them a voice he proposes that the Proposed Rule include an Acequia and Water Security Advisory Group very similar to the WSTAC, comprised of rural representatives from acequias, mutual domestics, and land grants. This group would provide a statewide forum for input to ensure that rural water rights, water needs, and viewpoints are considered and incorporated into each region's plan and related activities.

On questioning, Mr. Montoya added that regional acequia associations are usually representative of a basin with a lot of things in common. There are nine acequias above Española and below the Embudo Land Grant. Other regional associations, such as Pojoaque or Taos, represent similar interests or have a basin in common. Acequias that organize have a stronger voice as a group rather than individually, and also share ideas. (Tr. Vol. 2, pp. 475-481)

Elaine Hebard has been involved in regional water planning in New Mexico for more than 30 years, and helped develop the related handbooks in 1994 and 2016. She submitted written comments. There really is no planning process in the Rule. She understands this will be included in the Guidelines, but Guidelines can be forgotten in a way that Rules cannot. The Rule calls for PPPs, but those are an end product of the planning process. Before they can be developed those regions have to go through a process, and 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 or a public welfare statement be developed without such information? Then, scenarios can be developed--weighting, feasibility, cost, impacts, and water savings--before prioritizing those PPPs that will help implement the plan. Each region should also develop a water budget to be able to show success, and then we can implement it. (Tr. Vol. 2, pp. 482-485)

Rather than readiness as the prioritization criteria, PPPs should be evaluated as to how they 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 follow-through. 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 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. 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 or that development, this or that water use, what are the

impacts when we start transferring water? In the Middle Rio Grande those ancient water rights along the river help keep that river alive and flowing, and ones maybe farther away, not. Where those water rights are being transferred must be considered. 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. (Tr. Vol. 2, pp. 485-487)

Ms. Hebard's second suggestion is in 19.25.16.12A(2)(d). She would suggest not removing "water advocacy nongovernmental organizations." Folks like the League of Women Voters may not consider themselves to be environmental groups, but they should be invited to the table. Her third comment is that the Rule calls for submission of PPPs even if the data is not there to support them. That could create a huge loophole, which has happened in the Middle Rio Grande. They have a plan with a bunch of lists, but the group never met again and it's on the shelf. A lack of money to attend and time to participate is not limited to just rural areas; they have a problem in the Middle Rio Grande, too.

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. Planning program Rules must provide a clear, high-level framework that defines objectives, responsibilities, and implementation processes. The program set out in the draft Rule does not do that. (Tr. Vol. 2, pp. 487-489)

On questioning, Ms. Hebard stated that she could share two examples of regional water plans where there was a process of vision and goal-setting and defining problems such that

there was some sense of collective buy-in or ownership of the outcomes. For the Middle Rio Grande, in the 2004 plan, they spent a lot of time getting to know each other and talking about their values. It was incredibly important to moving forward. The other example is within the subregional plan, when they were meeting in San Ysidro, and the representative from Zia Pueblo came and said, "You missed something," referring to the spiritual and cultural aspects of water. It wasn't in the value statement, but it became Number 1. A planning process without shared values and goals will end up where they did in 2016: everybody came in with their CIP lists and just handed them in. There was no real evaluation of the cost or benefit, so it became a process that had not much meaning and no follow-through. (Tr. Vol. 2, pp. 490-493)

Issues like water rights and transfers can be brought into the model and the discussion. In 2004 they kept those issues off to the side because they didn't have enough information. You could say "When we talk about use, we also talk about ownership." Without that connection we're just talking about things conceptually. Ms. Hebard does understand why the regional boundaries were changed. In 1997 Socorro County and Sierra County asked the ISC to split off from the MRG because they did not share a lot of values. They felt like they were more Ag than urban. Rio Puerco and the Rio Jemez tried to do that, and they were made a subregion without any guidance as to what a subregion is, but she thinks the Commission can help with subregions and sub-buckets in that regard. (Tr. Vol. 2, pp. 494-497)

As to how to move forward when adjudications are 20-, 30-year projects, the Rule basically says that it will be based on the best current data available. One source of data could be the irrigation records for MRGCD and the State Engineer, but you need to bring water rights into the discussion. Water ownership has not usually been dealt with in water plans, so bringing

that forward using whatever is available now would improve the discussion about how we are going to reduce depletions in the Middle Rio Grande, for example. Bringing someone in to talk about how you will share some of your resources will mean a better and more robust plan. She doesn't see how you do planning without bringing in the ownership of the resource being discussed. (Tr. Vol. 2, pp. 498-500)

Ms. Hebard agreed that considerations of public welfare and vision statements extend beyond just water availability and ownership, including the ability of acequias to aggregate and advocate for themselves, and some of the Tribal issues. The sacredness of water mentioned by acequias and Pueblo leaders is not part of priority administration or adjudication, but is it an appropriate value to bring into the planning discussion as we think about the future of water and future needs. These discussions would be part of a regional plan. (Tr. Vol. 2, pp. 501-502)

As to where regions typically get water budgets and water models, Ms. Hebard hopes that would be in the Rule such that we would have a water budget and how to pay for it. For the Middle Rio Grande in 2000 they were able to partner with Sandia Labs to make a "Mini Water Budget." It really helped because they 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. They had a technical committee that worked on the water budget itself such that they could put those numbers into a computer model. Everybody could have a fairly basic water budget for each region. It could then be modified depending on what the needs were. She hopes it would be something that would be provided by the Rules as a tool to help all of the regions. (Tr. Vol. 2, pp. 503-504)

As to whether a common technical platform should still be there as an equity issue such that all regions would have access to good quality data, Ms. Hebard stated that one of the issues with the common technical platform was that it relied on nine human diversions in the State Water Report. In the 2004 report, Dr. Shoemaker and his group, paid for by the state, found that some 45% of water usage was by evapotranspiration from the Bosque and other places, and evaporative losses from the river not including Elephant Butte. That was not included in the common technical platform. With those huge amounts not included, how do you plan if you're trying to keep the Bosque, deal with the Endangered Species Act, and ensure that water is going to get downstream to meet compact deliveries? All consumptive water uses must be included, so that we can plan for them. (Tr. Vol. 2, pp. 504-507)

As to how to proceed without a quantification of ownership in a complex water planning region with many different stakeholders, such as the Middle Rio Grande, Ms. Hebard is not advocating adjudication. She is advocating that people who own the water right have a way of participating. If they are not part of an acequia association or a Tribal interest, the MRGCD is not sufficient with one board member to represent all interests up and down a 4 county area. One way to incorporate those interests would be to bring in a group to identify who owns what. Ownership could be brought in by having a committee. In the 2004 plan there was a water rights group that had a vote as to what plans went forward. MRGCD led that group. We should not get sidetracked by "We haven't adjudicated and we're not going to adjudicate, so we can't plan." 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. (Tr. Vol. 2, pp. 508-511)

Arturo Archuleta spoke on behalf of New Mexico Land Grant Council. The Council is a state agency tasked with providing support to Land Grant Mercedes throughout the state. Land grants, like acequias, are small local government entities that predate both statehood and United States sovereignty in the Southwest. Under state law land grant boards of trustees have authority over the common waters of their respective grants. The Council di submit written testimony to the Commission; he is briefly speaking to their recommendations. 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. This will help capture some of the small local government entities like land grants, acequias, and mutual domestics. They also support the inclusion of land grants as part of Section 19.25.16.12, which covers "Composition of Regional Water Security Planning Councils." They encourage the inclusion of representatives from mutual domestic water consumer associations within that section as another water interest group comprised of local small communities, with a local government structure. Finally, they request the inclusion in the Rule of an Acequia and Rural Water Security Advisory Working Group as proposed by Mr. Alfredo Montoya. It is very important to ensure that the rural community water users have another opportunity to be heard and an additional sounding board for giving input into this process. (Tr. Vol. 2, pp. 513-515)

On questioning, Mr. Archuleta testified that while there were hundreds of land grants initially, today there are roughly 3 dozen land grants that exist in some form, and they provide support directly to the 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 local government entities, land grants provide not only

the management and care of common lands and common waters they've retained, but often also serve as the only local government within their rural regions, to provide services like community centers, weigh in on policy issues, water and wastewater infrastructure, and local road maintenance. The common waters they manage often include community springs, so they have a definite interest in protecting those resources and ensuring they are included in regional planning processes. Because they are unique in this authority, they are often overlooked when it comes to waters of adjudication and water planning generally. They are hoping to bring them back into the fold as part of these groups. (Tr. Vol. 2, pp. 516-518)

As to how this process could be made more accessible to limited-resource communities like land grants, one thing that's helpful is having opportunities to provide comments and engage in these processes that fit around their schedules. Often, they are working full-time jobs, so hearings scheduled in the middle of weekdays can be challenging. Evenings and weekend opportunities are helpful in allowing access. Also, a lot of land grants don't have professional staff, so organizations like the New Mexico Land Grant Merced Consejo, which is an association of land grants, and the Council itself, can help lend support to engage in policy discussions. There was a proposal for addressing the need for funding within the Rules, and they support that as a welcome addition to ensure opportunities for involvement by members of rural communities. (Tr. Vol. 2, pp. 518-520)

The data necessary for land grants and rural communities to plan for their water future is water availability and future impacts of uses. Understanding who has water rights and how those are impacted by the decisions is important, and what the potential risks or threats to future water supplies are. It would be helpful to be able to identify planned developments or

planned future water uses within the different governance structures that have jurisdiction within different basin regions. (Tr. Vol. 2, pp. 520-521)

Evalyn Bemis is a Parciente with the Acequia del Llano, north of Las Vegas. It's a small acequia with only 7 members, and all their wells are quite shallow. On their property, it's only 100 feet to water, so they are extremely concerned about water quality issues. They 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 the Water Quality Commission is coming under pressure from the Governor to rewrite the Rules that held off fracking wastewater from being reused until there is disclosure of the chemicals used in fracking and other proof that the water is no longer radioactive or otherwise concerning. With the Governor pressing to overturn those Rules for the benefit of solving the oil and gas industries' problems, if they face this water as agricultural use or in any way that it can get to the water table, they have no alternative. They 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 side issue for this Rule promulgation, but the ISC should be mindful of the power it holds to help protect the whole state in this regard. Slow things down. Water is life. It is the basis of everything. (Tr. Vol. 2, pp. 523-524)

Sarah Knopp is 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 rulemaking as parties allows for a participatory process and 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, entering as parties would allow them to cross-examine witnesses and evidence presented by others, such as the ISC staff, and question them more profoundly.

Since one of the topics of this Rule is about public welfare and the needs of future generations, they hope the ISC will set up a rulemaking process that allows for a higher level of participation in the process. They have evidence from other commissions, such as the WQCC, that this works. In the recent produced water rulemaking, the participation of parties from interested groups led to a rule that was more protective of human health and the environment. Allowing the public to participate in the rulemaking process as parties may slow things down, and the ISC may be meeting all of its minimum requirements for public participation, but if public welfare and the needs of future generations are 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 the rules. The Jemez Principles for Democratic Organizing, which were developed in New Mexico as a foundation of environmental justice in 1996, state in the third principle: "Let people speak for themselves." Slowing things down is not always a bad thing when it makes the process better, especially by affording greater clarity, such as in this hearing through the questions about subregions and their intersection with Tribal water right settlements. Amigos Bravos supports the comments submitted by the NMAA. Ms. Hebard has her thinking how nice

it would be to have a water rights map. Amigos Bravos urges the Commission to set up a process for rulemaking that allows for a higher level of participation for all stakeholders; allowing the public and other interested parties to enter as parties, submit evidence for consideration, and cross-examine evidence submitted by other parties. (Tr. Vol. 2, pp. 526-531)

Harold Trujillo is one of the founding members of the New Mexico Acequia Association. He is also the President of a local acequia in Mora County, La Isla, responsible for operating Morphy Lake Dam, a unique community project started in 1861. They have a long history of working on acequia issues. He is a Registered Professional Engineer, has worked with the state for over 40 years, and done a lot of rulemaking to administer programs. He would encourage information in the Rule adequate for a program manager to administer it, because he has found himself in many cases when Rule provisions were not clear. Then legal review and a legal determination is needed to implement a program, and sometimes that changes from administration to administration. It makes it hard for a program manager to implement a program if the rules are not clear. Mr. Trujillo also repeated some of his specific concerns in the Rule. They want the words "political subdivisions" added to clarify that there are a lot of small entities that manage water in the state, such as acequias and rural domestics. They met as a group with their membership, and encourage the creation of an advisory group to assure input from different stakeholders. They are also interested in the ISC providing facilitation and guidance to make sure these groups are functional. They recommend the use of consular governments, such as COG, which is recognized currently by the state. Those groups would be important, with helpful ideas, and make the whole process work. They don't want to get into the condemnation of water rights. He had experience in the last water plan done in the region

where Mora and San Miguel Counties meet, with a lot of representation from public entities. He is also concerned about the mixing of watersheds. They have the Canadian Watershed, and Las Vegas has the Pecos Watershed. Will a watershed with water connect with a watershed that doesn't have water? Historically, a lot of the regional plans relied on water coming from other plans. He hopes this Rule can help with that challenge. (Tr. Vol. 2, pp. 646-650)

Sylvia Ernestina Vergara is a Parciente, and she has an agricultural business called Tierra Milagro, with an orchard, farm, and nature sanctuary. She has been on Tierra Milagro for nearly 50 years. She has been a two-time Commissioner of the NMAA, and of her ditch on the acequia called Acequia del Medio. She is delighted the Commission is interested in public welfare values and wants to define it. She sought her own definition: she looked up the word "welfare," which means health, happiness, and economic well-being. What's important is the health of the water, because we are about 72% water ourselves. Healthy water will help us to be healthy. If we have sick polluted water, then we will probably be sick also. In our world we have very little potable water, so it's precious. That water is also very important for agriculture and growing our food. Healthy water produces healthy food. Education is also important. Learning about water can happen at early ages. Education will help people to not make the water sick, hopefully. These different entities have at least those things in common. They have a wonderful example called "repartamiento," which is about sharing the water equitably among different acequias, the ditches that feed water to the different parcientes, owners, landowners, and farmers. They have never not rationed the water when they've had to do this. This has been done for centuries, and that's why they exist today. When you have grown up sharing water, you know you can expect an equal and just way of sharing water. Those are the most

important things for public welfare, serving the definition of being healthy, happy, with a positive impact on economic stability. All of those go well together. Education is essential, as are the many different perspectives and points of view. (Tr. Vol. 2, pp. 651-656)

Greg Kaufman is the Environment Director for the Pueblo of Sandia; he presented a statement on behalf of Governor Felix Chávez and the Pueblo of Sandia. The Pueblo concurs with the comments offered by WSTAC 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. WSPA does not authorize the Commission to establish procedures for the State Engineer's termination of public welfare and water rights permitting.

The Pueblo has filed its own written comments relating to Section 19.25.16.16 of the Proposed Rule. They offer the following additional comments to assist with the Commission's decision making: 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 use. (Tr. Vol. 2, pp. 673-676)

Despite a long history of water use, their right to water and to divine water uses remains in question. It is difficult for them 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 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 their underlying concern. The proposed procedural process obscures the Pueblo's important sovereign interests. The Pueblo supports a weighted voting mechanism that ensures Tribal representatives' votes carry equitable influence in matters directly impacting Tribal water resources. They also support consensus- based decision making for any water planning decisions affecting Tribal water rights. These commitments would help to minimize the possibility of future regional conflicts. (Tr. Vol. 2, pp. 676-677)

The Pueblo recognizes that fostering collaboration among heterogeneous interests is a challenge. For all practical purposes, however, the 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 state's population is within the proposed Middle Rio Grande Regional Water Planning Area. According to their 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. (Tr. Vol. 2, pp. 677-679)

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 decision-making for any water planning decision affecting Pueblo Water Rights and uses. 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. They understand the complexities of the task presented by the Act, and the importance of developing regional water security plans with prioritized projects and activities from each planning region. The Pueblo has in the past participated in regional water planning activities. Unlike 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. Well-supported state engagement efforts within a government-to-government framework for decision-making may have a better chance at success in promoting Tribal and state water planning efforts in a regional context. The Pueblo asks for and appreciates meaningful consideration of its concerns. They also request that the Proposed Rule and Guidelines to implement WSPA be referred back to ISC Staff for further consideration and revisions consistent with their comments. (Tr. Vol. 2, pp. 679-681)

On questioning, Mr. Kaufman stated that he did not have any proposed solutions for a weighted voting process. Their chief concern is that the Middle Rio Grande Region includes so many political subdivisions and only 6 Pueblos, Tribes, and Nations. 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 other political subdivisions represented on the Council. WSTAC is prepared to work with ISC Staff to develop a solution to that problem, but it is going to take several meetings and a lot of discussion to work that out. (Tr. Vol. 2, pp. 681-682)

Gretel Follingstad is a Senior Manager with the Climate Resilient Water Systems Program at the Environmental Defense Fund, and 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 decision-making under uncertainty. EDF is a global environmental NGO that focuses on providing a vital Earth for all. EDF acknowledges the hard work that ISC Staff has put into the Proposed Rule 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, and acknowledges the updates to the Proposed Rule that were incorporated in the ISC's staff testimony. Her comments will focus on areas they felt were most important to consider. They support the testimonies from Tribes, Pueblos, and Nations; and they support the testimony from WRA and New Mexico Wild regarding long-term impacts, as well as the benefits of the PPPs in the documentation provided by the Planning Councils. (Tr. Vol. 2, pp. 683-685)

They offer the following suggestions: In the Proposed Rule Sections 6, 15, and 16 regarding public welfare and balancing water needs for future generations, they appreciate the

testimony from Mr. Chakeres. There is benefit to the regions and the planning process that ISC provide some technical assistance for this WSPA requirement with an optional and transparent framework during the initial planning period to 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. Providing this type of framework for this procedure could offer some clarity on the baseline definition of New Mexico's statewide public welfare values, including the history that Mr. Chakeres shared, 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, as noted by Mr. Chakeres, due to the variation across regions and their capacities. 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 mentioned the forthcoming Tools and Templates; perhaps this kind of optional framework for a facilitated process on public welfare values could be included in the deliverables. (Tr. Vol. 2, pp. 686-688)

In Section 10 of the Proposed Rule they suggest clarifying funding mechanisms and fiscal agents within the Councils for regional water planning activities, including research and data compilation within the Councils' outreach, and education for Council process, regional planning process, and meeting expenses, in addition to PPP implementation. Clarity is also needed on equity and 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 WSPA. They also recommend that the Rule provide guidance to Councils for entering into memoranda of understanding between regional entities if needed to ensure that Councils are well-structured

to implement their plan and PPPs. This could be offered in the technical assistance ISC provides in Tools and Templates. These resources will help Councils in both the process of developing their plans and executing the PPP lists for plan implementation. (Tr. Vol. 2, pp. 688-689)

WSPA places great emphasis on ensuring that regional planning is founded in the best available science, data, and models. They 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 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 will initiate the planning process, which would be based on the best available data and other key elements that are important for plan development. ISC's technical support responsibilities could also include communication 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 forthcoming Tools and Templates.

In Section 14 they 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. They would also offer 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, groundwater supplies 50% of the water used in irrigated agriculture. Proactive and locally-based groundwater management is an important component of New Mexico meeting the objectives of WSPA. They 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 the local areas. (Tr. Vol. 2, pp. 689-693)

Like many western states, New Mexico is facing escalating groundwater concerns due to diminishing groundwater levels, at crisis levels in some areas. The need for proactive, locally-driven groundwater management could not be more important. 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 to manage resources appropriately for local land uses, economies, and water availability challenges. There are successful examples in New Mexico, including the Pecos Valley Artesian Conservation District in Chávez and Eddy Counties. Commissioner Balok manages the PVACD, 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 can be formed under existing New Mexico law. 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 to address 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. (Tr. Vol. 2, pp. 693-695)

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 priorities and plans. (Tr. Vol. 2, pp. 695-696)

On questioning, Dr. Follingstad said that all groundwater basins in New Mexico have not been mapped. As she understands it, subregions do not have the same frameworks and rules as the membership of a full region. She wonders about the voting criteria of the membership and how that may impact a subregion; perhaps we need to revisit how subregions are formed, with some level of process provided for a full region Council to have a relationship with a subregion. From a groundwater perspective, we do have very large regions. She understands

why staff reduced the number of regions and how they came to that mapping process. The subregions offer some level of resolution to some of the issues and challenges that may be faced because of these large Regions. (Tr. Vol. 2, pp. 696-698)

Regarding equity in the availability of data across different regions, Dr. Follingstad said 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. There are also remote data offerings that could be made available in the Tools and Templates or Dashboards being conceptualized, offering baseline data around climatology, water availability, and some of the federal level data. Those data sources would allow more rural areas to access that data as the technical assistance that ISC provides to create that baseline. Additionally, OpenET data is perhaps a possibility; right now some of that is proprietary, but perhaps there are ways the state can work towards providing OpenET data, which is 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 future needs and how to budget appropriately for the reduction in water resources we're facing with climate change. Mapped aquifers in different regions around the state is definitely patchy, but the program that Stacy is leading at the Bureau is important for that reason. Stacy has a list of priority basins she will be mapping. Dr. Follingstad suggests that the planning process coincide with her prioritization of those areas such that it's coordinated as they're working forward. Other options include the USGS data and NASA's GRACE data. The resolution of those is very different from what Stacy is doing, so the characterization and summaries Stacy is providing have much more detail. But the larger datasets that are federally produced offer at least a baseline

understanding. Also, if any region would like to be a part of the Monitoring Well Network, they are starting to put together baseline data around groundwater levels. (Tr. Vol. 2, pp. 699-704)

As for good sources of data on climatology, FEMA has a Floodplain Map and an archive of floodplain mapping for local communities to understand where their floodplains are, although some of these are very dated. There are also floodplain datasets with the NRCS and USGS, and NOAA is starting to put together a High Flow/Low Flow dataset to map those extremes. For New Mexico, it's more challenging because we have so many intermittent streams that flood. Red River, for example, cast almost 1,000 CFS into the Rio Grande yesterday. These flood events are captured by stream gauges, so you can start to archive them.

Regarding in Section 10 the concept of funding mechanisms, fiscal agents, and equity, there are a large variety of capacities across New Mexico. We need to understand what it means to fund each one of these regions for the regional planning process, to make sure that's equitable, and understand what "equitable" means. Some rural areas don't have university partners nearby to help with data or analysis, while other regions have multiple universities and other partners available to them. Certain regions may need more than other regions, and we will need a process for establishing that so that lower capacity regions still have the same opportunity to get good data and good planning with fewer partners. (Tr. Vol. 2, pp. 704-707)

There is an opportunity for the ISC to provide the baseline data to regions, and to provide assistance like optional frameworks or processes that regions could choose to use in their planning process. If a region is starting from scratch or it has been several years since the regional Council or group has met, having some level of framework to start from would be helpful. The ISC has an opportunity to provide that. It is a hybrid between the first round of

regional water plans and the second round, in terms of bottom up and top-down. Providing equitable access to the best available data is a way the ISC can help facilitate the Rule, especially in lower capacity and lower populated areas in the State working on plans.

The public welfare discussion of values is sort of a visioning piece of planning. She has seen great successes with contentious groups when they started with a visioning component of planning. That could be framed around, "What is Public Welfare for our Region," such that you end up with robust implementable plans because they work through some of that process in the beginning. They have suggested that framework and technical assistance happen in the initial planning period so regions can work together in the first phase while they are understanding how they're governed as a Council, and discuss their vision for the plan. What are they aiming for? What are the vision and goals? How are they going to get there then comes into this PPP process. She has 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. (Tr. Vol. 2, pp. 707-711)

William Miller is a Registered Professional Engineer in New Mexico practicing in the area of Water Resource Engineering, and has 48 years' experience in the field, including 20 years on the staff of the Stream Commission. It is gratifying to see so many water users who have made the commitment to participate in the development of these Rules. He does not have any specific changes to the language of the Proposed Rule to suggest; he does ask the Commission 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 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 are seeing declining water levels in underground water basins, and record low storage levels in 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. (Tr. Vol. 2, pp. 713-715)

On questioning, Mr. Miller stated that they have reviewed the stream flow record of index stream gauges, such as on the Red River, Santa Cruz River, or Jemez River; the records are replete with use of upstream water users. In the last 20 years there has been a steady decline in the runoff on the Red River, Santa Cruz, and Jemez River, which has resulted in chronic shortages to the water users, principally the acequias and Pueblos in Northern New Mexico. This is combined with a lack of infrastructure to address the low flows. It is difficult to divert water from the river with aging infrastructure, and this affects the communities and the local economy. In addition to drought, some of the extreme hydrologic events we have seen included cloudburst rainfalls depositing sediment in stream flows that makes it difficult to

deliver water downstream and reduce channel capacity. Floods increase the water levels and damage stream-side and safety infrastructure. (Tr. Vol. 2, pp. 716-718)

Toby Velasquez is the Director of the EMNRD Parks Division. The New Mexico State Park system is in its 92nd year, and is part of the tapestry of our Land of Enchantment. The State Park system is comprised of 35 state parks in 23 of 33 counties and supports over 5 million visitors each year. The State Park system relies not only on its own water rights, but other water rights to fill 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, he respectfully requests that the Commission add the language provided in their written comment and make the New Mexico State Parks a voting representative for planning regions that have one or more state park within them. This is provided under 19.25.16.12A(1). (Tr. Vol. 2, pp. 719-721)

John Kadlecek is a Supervisor with the Santa Fe-Pojoaque Soil and Water Conservation District. He also serves on the Water Policy Advisory Committee to the Santa Fe Board of County Commissioners, is the President of the Rio en Medio Mutual Domestic, and the Mayordomo of the Rio en Medio Ditch Association. He is commenting mostly in his capacity as President of the Mutual Domestic because he is concerned about the language of the at-large representative for mutual domestics in its particular vagueness. He liked 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; they are not part of one as none exists.

There are conversations about creating them, but many mutual domestics are autonomous in nature and won't necessarily want to be involved in something like that. He wishes he had a solution to offer. Subregions are a very good idea, including having voting rights and being based on groundwater areas. His other concern, which is the elephant in the room, is the discrepancy between paper water rights and the actual amount of water in this state. Again, he doesn't have a solution; maybe there's a way that will come out in the PPPs. Part of this is about protecting water rights, but there is less water than water rights, and that's an important issue. 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. He also wonders if the Open Meetings Act requirements apply to the different Councils. (Tr. Vol. 2, pp. 722-725)

On questioning, Mr. Kadlec confirmed that he is located in the Pojoaque Basin, just north of Santa Fe, outside of Tesuque. Regarding the discrepancy between paper water rights and actual water, developers in Santa Fe have to show that they have enough water rights to provide water to the residents 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. From the beginning of 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. He is not an expert; it's his understanding that the discrepancy was there from the beginning. He is not 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; he is saying it's all done on paper. Most years they get no water in their acequias, but there are paper water rights their Parciantes own. The Rio en Medio is the river that runs through the Santa Fe Ski

Basin, and so they are heavily reliant on snow melt. There are a number of springs, but they are also reliant on snow melt. Most summers, especially if there is little to no snow melt, the river isn't high enough to get into the acequias. They have 3 different acequias, and each one has around 10-acre-feet that should be going into it. For the first time this year in May they were told by the OSE for the one acequia that's metered that they had already used their total allocation. It's the first time since 1863 they have to shut down the acequia for that reason, and especially that early. They were told the Pueblos downstream were monitoring that gauge, and had complained that they had already used the amount of water they were allocated. He is not questioning their right to do that; he is pointing out changing conditions and the scarcity of water. His primary concern is with development. (Tr. Vol. 2, pp. 725-730)

He agrees it would be helpful in the regional water planning process to understand the discrepancy between paper water and wet water. That data is available, maybe not readily available. Some of it depends on how well have the aquifers been mapped. He sees the numbers said to be coming from the Aamodt Settlement from the pipeline; it's hard to believe there will actually be that much water because it's based on snowfall. (Tr. Vol. 2, pp. 730-731)

Senator Steve Lanier is a retired school teacher; water is one of his passions for years and years. He became a County Commissioner, and then a State Senator. He sat as the Chairman of the San Juan Water Commission, which is very active in their area. He also sits as a Trustee for the Colorado Water Users Association. He thanks staff for their hard work on this Rule. The San Juan Water Commission has a mission Statement: "Protect the use of future existing water rights and water resources of its member entities." They represent several entities and were established in 1989. The 40-year Regional Supply Plan is their basis. They

organized and led regional planning in the early 2000s, and assist member entities in water planning and resources; that has evolved since the Animas-La Plata Project was completed. They are helping their entities even more than usual. They say "60% of New Mexico's surface water runs through San Juan County." The precise number is disputed, from 76% down to 50%. They do participate in the San Juan River Basin Recovery Implementation Project, and are a founding member of the Animas-La Plata Project, OM&R Association; he sits on that Board.

They have suggested amendments. In 19.25.16.16A through C, they are very worried that the Rule may not be quite right, and want to make sure that the statutory authority in promulgating the Rule is preserved. They want to make sure that we are not taking away power from the State Engineer, or doing things that open us up to lawsuits later. They are asking to delete the section concerning public welfare as it is a very broad term, and it's going to be very difficult for anyone to define. They believe it is beyond the statutory authority granted by WSPA. It could restrict water right owners' ability to use their water rights. 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. We also 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 would include the San Juan Water Commission; they believe they should have a seat at the table. (Tr. Vol. 2, pp. 732-739)

Community ditches in San Juan County serve as many residents as a small town. The small town of Bloomfield, New Mexico, has about 7,400 people. That's about the same number the Commission's small entities represent. Expanding representative members is in 19.25.16.12A(1). They would 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." Then (h) would be inserted: "One representative member from an active land grant appointed by the Land Grant Council in a planning region." Then they would insert (i), as 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." 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," this map is just like an overlay of the map that shows the townships, and county boundaries, so we can identify exactly where these regions would be. Some of the proposed regions are very large; they would like to see that reviewed just to define it a little better. (Tr. Vol. 2, pp. 739-743)

A severability clause 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 in Section 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." The more we can do in this Rule, the less we will have to do in a court ruling. (Tr. Vol. 2, pp. 743-744)

Elizabeth Newlin Taylor spoke not as a representative of the San Juan Water Commission, but as a water law attorney with more than 30 years of experience. She gets a lot of permits from the State Engineer's Office and has represented public and private clients. She

has also been involved in rulemakings and testified before the Legislature. Her comments are threefold, regarding the public welfare directive to the State Engineer, Council membership, and drafting suggestions.

The part of the Proposed Rule that directs the State Engineer to consider public welfare and to make a written decision about it is beyond the authority of the ISC. As a water rights owner, or representing a water rights owner, the transfer of a water right is an inherent part of ownership. If I can't move it, what good is it? I want to use it in place, but I also need the ability to sell it and to move it; that's part of ownership. A water right owner will look at Article 72, the venerable Water Code from 1907 forward, and the rules and regulations of the State Engineer, which are very helpful in explaining in detail what the statutory criteria are and all the procedures to follow in order to successfully transfer a water right. If you mess up on the procedures, you're out. If you fail to pay the filing fee or you don't provide the information the State Engineer needs, you can be out. A water right owner would not look at the ISC Rules, and that illustrates the structural and legal problem with 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. Ms. Taylor sympathizes with Nat on good policy issues and agrees we need to talk about public welfare; it is a huge issue, and becoming more of an issue in water rights transfers. (Tr. Vol. 2, pp. 745-749)

For the first 25 years of Ms. Taylor's practice, public welfare and conservation were the "also rans" in a water rights transfer. The big issue was, and still is, impairment: will the transfer hurt anybody? Conservation and public welfare are becoming increasingly important in transfers and other types of applications, but that should be decided in a State Engineer

proceeding because the ISC does not have the power to tell the State Engineer how to do it.

Taking out Section 16 does not remove consideration of public welfare in transfer applications.

As Nat said yesterday, it's already there; she has litigated cases where it's there. It doesn't stop the regions from talking about and deciding what "public welfare" means to them. The Commission can accomplish everything it needs to under the Act without Section 16.

We need to expand the membership on some of the Councils. Senator Lanier provided the language. Ms. Taylor is part of 2 different organizations that are political subdivisions. She has represented the San Juan Water Commission in their water rights matters for more than 30 years. They are not included in the list of representative entities; it does not fit in any of the categories. The one it might have fit into is the one that says: "You have been a Water Planning Entity continuously," but when the ISC stopped doing water planning, the San Juan Water Commission did too. The other organization Ms. Taylor has been involved in for the last couple of years as an elected Director is Albuquerque's Flood Control Authority, AMAFCA, which is a political subdivision. AMAFCA has the power to impose taxes, and they do, to build the North Diversion Channel and other flood control facilities. One item within the PPPs is flood control, or stormwater. That's what AMAFCA does, but it's not on the list of representative entities. She would add a new provision for additional political subdivisions: "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." She has heard the fear that opening it up to all political subdivisions will inundate the Councils with members. Is that really a bad thing? Perhaps not. More importantly, political subdivisions that don't have anything to do with water will not come; they have other things to do. That fear is somewhat unfounded; it is important to open

the door for membership for political subdivisions that are not otherwise listed. 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. (Tr. Vol. 2, pp. 749-754)

Ms. Taylor displayed a map from the State Engineer website to illustrate how the map for the Rule could be better, because the map on the back page of the Proposed Rule doesn't have counties on it, or any markers. Their preferred map shows townships, groundwater basins, and rivers. She is just asking for an overlay on the map for more information for the public.

She is proposing a severability clause, which is in a lot of regulations. For example, if Section 16 is retained and a court decides it's ultra vires, as she believes it to be, the question becomes whether the whole Rule is invalid. That clause is important. She agrees 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 adding political subdivisions. (Tr. Vol. 2, pp. 755-757)

They agree that the acequias, while very important, don't have the same standing as the Tribes and should not have a Council. She agrees with Mr. Chakeres that the regional planning Councils do not bind the State Engineer, and that's very important, but the Rule still goes too far; she would keep the "shall" as "may" where he suggested changing it. They agree with the Pueblo of Acoma and Sandia that the public welfare section is beyond the ISC's authority under the Act. (Tr. Vol. 2, pp. 757-758)

Senator Lanier and Ms. Taylor were questioned as a panel. Ms. Taylor does not believe the New Mexico Rural Water Users Association is an entity defined in statute. In San Juan County it is an umbrella organization made up of 7 or 8 other rural water user associations, and has a seat on the Board of the San Juan Water Commission. It represents its member entities,

which are rural water associations such as a mutual domestic or a co-op. The San Juan Water Commission itself is not considered a rural water association. It was formed in 1986 under the Joint Powers Agreement Act, made up of the cities of Aztec, Bloomfield, Farmington, the County of San Juan, and the rural associations. (Tr. Vol. 2, pp. 759-761)

Senator Lanier stated that the New Mexico Rural Water Users generally represent community ditches; the difference is they only have a five-Commissioner Commission, as they didn't want a twenty-Commissioner Commission. All of the water associations fit underneath that umbrella, so they talk and send one representative to the San Juan Water Commission. It's different than acequias, although legally acequias and ditches are the same, recognized by the same statute. Ms. Taylor clarified that acequias tend to be historic organizations from the 1600s forward, and the community ditches, at least in San Juan County, are much more recent; from the late 1800s. They do govern themselves with the same types of bylaws as Chapter 72, Article II and III. One difference, too, is that there are other sorts of rural water associations that are not community ditches, but co-ops. There may need to be some amendments to their proposed language where they are suggesting that community ditch associations be appointed by the New Mexico Rural Water Association. (Tr. Vol. 2, pp. 761-764)

Although WSPA includes a statement that nothing in the Act shall be construed as permitting the condemnation or abridgement of water rights, Ms. Taylor's concern about Section 16 is more structural: the Act does not give the ISC the authority to tell the State Engineer what to do, and the ISC is not the State Engineer. She is greatly comforted that the decisions under this Rule cannot affect a water right owner's rights, but it's a slippery slope. She doesn't know how to reconcile that part of the Act with the directive in the Rule as to how the

State Engineer should decide a transfer application. To her, those are in conflict, and when you want to know how to transfer a water right, you look at the Water Code and regulations of the State Engineer. (Tr. Vol. 2, pp. 764-766)

Senator Lanier agreed on behalf of the San Juan Water Commission that the deletion of Section 16 would still allow this Rule to accomplish everything required under WSPA with whatever amendments that are later done. He does believe the organizations within the San Juan Water Commission can come to a public welfare statement. There are so many different views it would be very difficult for them to come up with just one; with some guidance and several meetings they might be able to narrow it down, but knowing that group of people, that would be very, very difficult just within the organization, much less the whole Region.

Ms. Taylor believes subregions are necessary, especially given the large size of the 9 Regions. For example, in the Rio San José Adjudication settlement, that water plan probably should have its own region. There are parts just within the Northwest Region that includes San Juan County that are hydrologically distinct without any hydrologic or historic connection. It would be very difficult to have a Planning Council and process without subregions. As to why it would not be better for a region to put forward their concept of public welfare for the State Engineer to consider, Ms. Taylor described State Engineer hearings: every protested application that goes to hearing involves at least 3 parties, the applicant, the protestant, and the Water Rights Division within the State Engineer's Office. The Water Rights Division always goes last, and they have the function of being the gap-filler, there to present information to the State Engineer for consideration that the other parties don't present. There is nothing in the Rules to prevent the Division from bringing in the regional public welfare statement, and they

should probably do that. If it was relevant to a particular application, the applicant or protestant would probably bring in the public welfare decisions of the Planning Council. The Water Rights Division has guidance from Nat as to what they should consider as "in the Public Welfare." He can just add, "If there is any decision of the Water Planning Council, that comes in, too." 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.

There are other parts of the Rule besides Section 16 requiring the Planning Council to come up with a statement of public welfare, which is important. Section 16 just says what the State Engineer has to do with that decision. (Tr. Vol. 2, pp. 766-776)

Laura McCarthy is the State Forester, the Forestry Division Director at EMNRD. She will repeat information that was provided in a letter submitted jointly with the State Parks Division. The Rule is very good, but it is missing one 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. Good water planning considers wildfire impacts, and potentially doing projects that can mitigate the impacts of future wildfires. She will offer 3 specific ideas, and then give an example of what the community of Flagstaff is doing in this area: First, the Rule should explicitly recognize the impacts of recent and historic large-scale wildfires on regional water security. Councils should be 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. This won't be applicable in every part of the state, but almost every watershed will have some vulnerability. (Tr. Vol. 2, pp. 778-780)

Second, 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, 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 with 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. Flagstaff experienced a wildfire that really devastated a portion of their community. They realized that they had other watersheds that weren't burned that would also, if burned, create severe problems for their downstream infrastructure, so they created a project to establish a post-fire water holding zone within their community. It 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 they are recommending be incorporated into the Rule, to guide the communities or Councils in their work. Finally, like the State Parks Division, they request 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. (Tr. Vol. 2, pp. 780-782)

On questioning, Forester McCarthy stated that 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, for multiple reasons: one is the continual movement of debris and ash out of the burned watershed for as long as 10 years. Second is the ability of the water infrastructure to deal with the amount of ash and debris coming into their

system. They have examples from the South Fork and Salt Fire of water continuing to move and flood through the community itself, moving homes downstream; literally tearing them from their foundations, and a U.S. highway being washed out in sections. The economic damages from the Hermits Peak/Calf Canyon and South Fork/Salt wildfires 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. At the scale of the Regional Councils, it will be very clear as to which sub-watersheds and basins are the most important in terms of downstream infrastructure and the provision of native water. The Councils have an opportunity to identify the areas of forest that are of most importance from a water supply and water resilience perspective, and then work with Forestry Division staff to 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. This will make a difference in post-fire impacts because low severity fire typically burns through grasses and undergrowth and only licks at the base of trees; it 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 they're trying to avoid scorch everything and create a hydrophobic layer of ash that water can't penetrate, so water flows downhill fast and creates the debris flows we are trying to avoid. (Tr. Vol. 2, pp. 783-787)

Forester McCarthy agrees that stewardship beyond hard-engineered projects and the consideration of forest stewardship is important in water planning, and she does not see that currently in the Proposed Rule as a criteria for consideration. 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 in Southern New Mexico, a little more year-round. Past iterations of 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. EMNRD is recommending that a representative of the Forestry Division be added to each Regional Council to make communication and the consideration of where projects should be located for the benefit of water resilience a more institutional and seamless process. Without a person with forestry expertise on the Council, it is going to be a lot harder for the Council and the Department to work together to do real projects that steward the forest and improve water reliability over the long run. (Tr. Vol. 2, pp. 787-790)

Yvonne Aragón is a Parciente, and an heir to the Anton Chico Land Grant. She and her family have lived in Anton Chico and the surrounding communities for generations. Their lives, lands, and livelihoods are tied to the 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 land and water. Its legacy is directly linked to the preservation of acequias and the sustainable use of the Pecos River. Regional planning 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 threaten senior surface rights. Each individual acequia must be recognized and protected according to the senior priority date. 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 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. (Tr. Vol. 2, pp. 790-794)

Jessica Swan is a Land Grant heir working with Parciantes throughout New Mexico whose lives depend on water. She generally supports the Proposed Rule, but she encourages the ISC to add an Acequia and Rural Water Security Advisory Working Group. This Group should be statewide. The Rule should include no ISC Planning Regions overlapping or contained within

Councils of Governments. Throughout the Rule we need more opportunities for community engagement to increase input on wildlife impacts, the importance of state parks, the importance of crops, and how future generations demand non-extractive renewable energies to continue thriving here in our ancestral lands. They support including one member from all mutual domestic water consumer associations. (Tr. Vol. 2, pp. 795-797)

Norm Gaume is the President of the New Mexico Water Advocates and a former ISC Director from 1997-2002. The Water Advocates is a unique nongovernmental organization because, from inception, their goal has been water balance. He is a retired Registered Professional Engineer. Engineers are trained to solve problems, and that's what they do. Problems require a definition before you work on the solution. Complex water resource problems are best solved through water planning. His purpose 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. His testimony is organized in 4 sections: framing; other relevant history; entirely missing statutory and professional water planning practice requirements; and a recommended path forward. (TR. Vol. 2, pp. 798-800)

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; the Commission should require all Councils to do that as a first and maybe a last step to check their plan. 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?

The Rule, as drafted, is vague, incomplete, and ambiguous, as shown by Commission questioning. Now it's up to the Commission to fulfill its statutory charge. Getting this program up and running is urgent. 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. Regardless, the Commission has a mandate. The ISC staff decided the program would throttle the pace of planning, making ISC planning staff capacity the indispensable resource, a consequence of staff decisions 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. (Tr. Vol. 2, pp. 800-802)

Water planning requires time. The Rule is completely silent on time frames, but staff intentions are clear; they intend regional water planning to be compressed to 2 years. In his professional experience, that is 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 in May. 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. 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. The Planning Program is voluntary. For it to succeed it has to be attractive; people must believe that this is the better way forward. He urges the Commission to consult with its expert Kristine Whitney Sanchez, who advised the Water Advocates pro bono for a considerable period of time almost 3 years ago. She will describe 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. He acknowledges that no one but the sovereign Pueblos, Nations, and Tribes can represent themselves, but a Planning Council consisting of dozens to over a hundred representatives is going to find it very hard to gain traction. The law says that many things must be considered. Consideration can be a checkbox, but the Commission must require that consideration be substantive and reviewable after the fact. Councils must have autonomy to decide how they will react to considerations. There is nothing that makes them adhere their plan to their considerations; they have autonomy, but their consideration must be meaningful. Be careful of intended consequences that will result from patching up the Proposed Rule to make up for incomplete thinking. For example, the Rule invites big water authorities, regional water authorities, and rapidly proliferating very small regional authorities. He works with his County Commissioner in Sandoval County; she is trying

to get the small water systems in Placitas and in the Jemez to regionalize. That would add numerous entities. (Tr. Vol. 2, pp. 802-807)

Relevant history that has not been discussed includes the mismatch between the 1987 Water Planning Statute 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. 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 only for a report on a shelf. When the ISC received subsequent water plans from the regions, it didn't know what to do with them. Consider the ISC's process to create the 1994 Handbook 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 the ISC clear authority to set expectations. The mismatch now is that the statute is stronger than the Proposed Rule. Substantive amendments were made during the process by the 2023 Legislature, including: adding an explicit statement that water planning in no way affects the water rights of owners; replacing non-economic environmental values with public welfare values; requiring consideration of the needs of future generations of New Mexicans; adding the concepts of programs and policies to projects; replacing at-risk communities with rural communities; and adding regional Council authority to compose themselves. This Rule must reconcile that with the section that directs the ISC to shape Councils. Senator Stefanics, after reviewing the draft bill, concluded that it was important, but would never pass unless it was a State Engineer Office bill, and she made that happen with the Governor's Office. State Engineer Hamman directed simplification of the bill.

He said he would not accept the mandates included in the draft language and wanted to give ISC discretion in rulemaking. LaDonna Clayton, Bob Wessely, and Mr. Gaume negotiated the bill concepts introduced by State Engineer Hamman and ISC Director Schmidt-Petersen. When he complained to former State Engineer Hamman a few months ago about the Proposed Rule, he reminded Mr. Gaume that the Planning Program is not the decisionmaker, the Commission is.

What's entirely missing from the Rule is a reasoned framework. The Proposed Rule ignores some statutory provisions that are important, merely restates some without elaboration, and gives meaning to few. What is the staff rubric for deciding how they have addressed each statutory element? 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? "Plan your work and work your plan." Work plans are needed and they need to be regional, not dictated by the state. Public welfare requirements are omitted, and where are the other Commission mandates? How will the Commission reconcile the amendment that gave Regional Water Planning Councils the ability to select their members with the provision that was already in the Rule? The Commission is required to figure out a way to read those together so that they both have meaning. Throttling of planning progress will be due to making staff the indispensable, scarce resource. 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 asked at the June ISC meeting whether the planning staff had done an alternative analysis of staggered or tiered planning, and they said they had not. He followed that up with a public records request, and there was nothing pertinent. (Tr. Vol. 2, pp. 807-812)

The absence of substantive approval criterion performance standards is an issue. There is only a bare checklist. There is a simple way to make consideration meaningful, by requiring Councils to understand the consequences of continuing the status quo, or the no action alternative, and what would be required for sustainability or for materially increasing resilience. Those are two end cases that can be illustrated with models and data. His experience is that planning groups can come together around data. Public welfare is very important, but it will be contentious. If a group can come together around the hydrologic reality, finding common ground becomes much easier. The Rule fails to operationalize Commission and Council responsibilities over specification of administrative detail. The Rule fails to incorporate communities in Proposed Rule concepts. The regions are an administrative convenience. He discussed this at length with former State Engineer Hamman as they were putting together the Proposed Rule. He was talking about the need for ISC, and the inability of 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. (Tr. Vol. 2, pp. 812-815)

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. His perception, based on his experience and the comments of district managers, is that the State Engineer's Office uses guidelines when they want to and disregards them when they don't. The Rule needs 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 WSPA. Moving forward from where we are: The ISC has complete authority under the State Rules Act and responsibilities under case law that the State Rules Act cites. The way the Hearing Officer and Commission have conducted this hearing has satisfied most of his concerns about that. The Commission has the authority to schedule another hearing, and can grant public experts the status that staff experts have; we 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. (Tr. Vol. 2, pp. 815-817)

He proposes a 4-point Commission Action Plan: Keep the record open, and invite closing statements. Think about using the 1994 Handbook process; the Water Dialogue was formed in 1992 to work with the Commission. The Commission ordered that two of its members would work with a small panel of water experts to draft the Handbook, and others were involved as well. The Commission could direct staff 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. Authorize and invite applications for modest grants so representative regional groups, or groups within regions using local knowledge and creativity, can submit specific recommendations to organize their regional Council. They can also do other things, like help

gather the data that's not online. 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.

For example, the Legislature appropriated money for outdoor recreation equity groups. He has been a member for decades of the Adobe Whitewater Club of New Mexico. They applied for one of the grants, and it was easy to get, so easy he wondered if it was corrupt. The Adobe Whitewater Club 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. Lastly, 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. The ISC has very significant power, and the moral responsibility to use it. Water is life. Without water, there is nothing. To summarize, the Rule is not ready and the Commission is responsible. We are where we are, and he has presented a clear path forward. 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 the Commission can do now with minimal additional effort and guidelines. There are no statutory deadlines in WSPA. The ISC can issue a simple guideline that would govern regional grants while all the rest of this work is done. Funding regional initiatives will invite the Legislature's respect and consideration of funding. Deliver a Rule that New Mexicans rely on for decades. (Tr. Vol. 2, pp. 818-821)

On questioning, Mr. Gaume stated that he was not with the ISC during the 1994 Handbook process. He was focused on Albuquerque's sole reliance on groundwater. He is

familiar with the process through discussion with John Brown, who was the Executive Director of the Regional Water Dialogue at the time. He is a Board member and still active. Mr. Gaume read the relevant paragraph: "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." The Commission appointed a volunteer work group to participate in the preparation of the Template and the Handbook. "Co-chaired by the two 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." As to the Rule referring to Guidelines, Mr. Gaume stated that his hearing presentation was a summary of his written expert testimony, which includes a section on guidelines. (Tr. Vol. 2, pp. 822-825)

Robert Wessely is the past president of the New Mexico Water Advocates and previously of the Water Assembly, its precursor organization. See his written testimony, particularly Exhibits B1 through B4 that are in the Docket under "Notice of Supplemental Filings," pages 8 through 34. 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. The Water Advocates don't have all the answers, but they believe their proposal can be very helpful. They assembled draft, the "Improved Proposed Rule," Exhibit B2, which they

believe can serve for use to mark up during deliberations. It is a redline markup of the ISC Staff's Proposed Rule. (Tr. Vol. 2, pp. 826-828)

Most of his 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 his retirement he wound up co-leading the volunteer Water Assembly and the development of the \$3 million 2004 Middle Rio Grande Regional Water Plan. He was also heavily involved in the initial drafting and promoting of later drafts; materials that eventually led to WSPA.

Their improved Proposed Rule 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 ISC Staff, as well as regular discussions with ISC Staff, and discussions at their Open Houses, resulting in their current proposal, their 93rd draft Rule. Their Proposed Rule has 4 parts: Exhibit B1 contains a brief overall rationale of the changes sought; 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 Exhibit B4 contains his resume. (Tr. Vol. 2, pp. 829-831)

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. The Rule 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 planning, 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 situation.

Mr. Wessely highlighted 4 key paragraphs of the improved Proposed Rule; detailed in Exhibit B2: First, in Paragraph 19.25.16.10, "Initial Planning Period," language is added 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, key process requirements are placed 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," existing words are replaced 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. In 19.25.16.15, "Criteria For Approval of Plans," they 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, they believe the Proposed Rule forms a good basis for the Commission to inject its desires, including those stimulated by public comment, testimony, and exhibits. The Water Advocates would be pleased to work with the Commission during the rulemaking process to help ensure Commission-desired changes are incorporated consistently with the various interacting sections of a very detailed improved Rule. (Tr. Vol. 2, pp. 831-835)

Redirect Examination of Program Staff Panel

Director Riseley-White, Mr. Erdmann, and Ms. Fox were presented as a panel for their final suggested edits for the Proposed Rule, based on comment and discussion they had heard during the hearing. (Tr. Vol. 3, p. 980)

Director Riseley-White stated that there are 23 Nations, Pueblos, and Tribes recognized in New Mexico, and approximately 800 acequias or community ditches. One of the factors in her consideration of representational members on any Council is the fact that there are already organizational bodies set up by statute to help with collective representation for acequias. The Proposed Rule is worded to say if there is an acequia association or community ditch association, they could designate a member. In their absence they would look to the New Mexico Acequia Commission to help designate an appropriate member for that representative seat. Section 12.A(1)(f) of the newest Proposed Rule edits has the relevant additional language. The idea for representation is not to include every regional acequia; it is to have one member from an acequia or community ditch join each Council if located in that region. It is critical to have acequias and community ditches represented on the Councils. It is also worth noting that

in 12.A(2), "At-Large Members," there is the potential for additional acequia representation in the seat for farmers in the region.

The Director confirmed that she is very open to prospectively providing 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 for the value it would bring. It also would be potentially something that could be funded through any grant program under the Guidelines, or both. (Tr. Vol. 3, pp. 980-985)

In response to commentary in the hearing, staff felt it would be important to be clear on the concept that the planning process would adhere to state water law, which is why they are suggesting new language in Section 6, "Objectives," stating, "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, that "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." The second sentence is from WSPA. They want to be as clear as possible that any action that might implicate water rights would have to go through a water rights permitting process.

In Section 9, Mr. Erdmann noted that the recommended change adjusts the language under Subsection B(9) 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 to add clarity on how that process would work. Another addition in Subsection 1 expands the description of potential bases for a 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." Mr. Erdmann had already addressed new Paragraph 6 on Indian Water Rights Settlements in his written testimony, a recommendation they accepted from Laguna Pueblo. (Tr. Vol. 3, pp. 985-990)

Mr. Erdmann addressed the question of why regional boundaries should not be redrawn notwithstanding urging by WSTAC and individual Pueblos. Essentially, we do not want to create regions so small that it is an administrative burden on the people within that region to generate an entire plan; secondly, as to the Rio San José specifically, 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 leaving that boundary intact provides some additional opportunities for the folks who live in that portion of the Southwest Region. Thirdly, there are several settlements that are pending or have not yet been taken up. Even if we were to address all regional boundaries to reflect all existing settlements, there are ongoing and future settlements to be addressed as well. They were trying to set out a subregional process that would work now and in the future as additional settlements are finalized.

If the Pueblo of Acoma were no longer in the Southwest Planning Region, as they are currently, they would not be eligible for Arizona Water Settlement funding. Having some portion of their lands within that Region gives them access to an additional opportunity. The Subregion allowance affords the most flexibility to both be included and do the work, and ultimately be integrated into the Council. Their hope was to provide greater flexibility for regions to be able to tackle some issues related to current and future settlements. As planning

work proceeds from the initial cut to detailed work, and with better data, he believes that subregions will become increasingly relevant. (Tr. Vol. 3, pp. 991-995)

Section 15, paragraph C(6), also deals with Subregions. The new suggested edit deals with the process for consolidating and ranking subregional priorities into a full regional PPP list. Outlined in Section 9 is the process for integration; this is a way to highlight that which is coming from a subregion within the larger context of a Council's prioritized lists, an opportunity, at the time a subregion is being considered, to determine how those considerations are going to be folded in. This also relates to the Readiness discussion; they want to have a process by which they can work with ideas coming from small entities for whom it would be difficult to get to the level of being shovel-ready such that this process moves those forward. They want to make sure that they always have a set of shovel-ready projects and other projects approaching shovel-readiness such that there are always steps to take. In Section 10.C, a minor clarifying change removes the words "the self-organized Council;" as the self-convening opportunity is already described. (Tr. Vol. 3, pp. 996-998)

In Section 11.B, there are 2 changes in Subsections (2) and (3) to move from "Commission acceptance of plans" to "Commission approval of plans." This is intended to be clearer that the plans are not merely being accepted for use, but are approved as to their completeness by the Commission so that they can be used more broadly.

Ms. Fox addressed the newest suggested edits in Section 12, "Composition," as it relates to representational capacity. Section in A(1), allows invited governing entities to pool or share their representation if they choose to do so. "A single representative may represent multiple governmental entities in the event that a governmental entity is located..." There has been a

lot of discussion about the size and potential burden of the Councils on entities, so they added a process by which multiple entities may send a single trusted person or maybe a couple of trusted people to represent their interests. Councils can bridge organizations and build trust. "Each Representative Member shall be appointed by resolution of each governmental entity's governing body." Those governing bodies could all appoint the same person. (Tr. Vol. 3, pp. 998-1001)

In Section 12.A(1)(f), language was added to address multiple regional acequia associations; each regional acequia or community ditch association may have a representative member on the Regional Council, to scale with the concentration of where acequias are. She would expect that the Upper Rio Grande and Canadian Council will have more acequia representation than maybe other areas.

There is also one representative member from each active Land Grant, and based on hearing testimony they thought it was imperative to assure that Flood Control Districts are represented on the Councils. The proposed language identifies the Flood Control Authorities defined either in Chapter 4 of the Administrative Code, or Chapter 72 relating to flood control. In Section 12.A(3), they propose clarifying edits for "Non-Voting Members," to increase Non-Voting Members to a maximum of six, rather than five, to accommodate more people from other regions having a seat at these Councils.

There are at least two active water planning steering committees that could participate in 12.A(2)(i), the Estancia Basin Water Planning Committee, and the San Juan Water Commission, which completed both of the last rounds of Regional Water Planning.

Clarification has also been added for "... up to 3 Non-Voting Members for areas that are hydrologically connected." This would include artificial connections, such as pipelines. It is very important for people in the Northwest Region, who have their water diverted into the Rio Grande, to have representative seats there. 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. (Tr. Vol. 3, pp. 1002-1007)

In Section 13.B(1), they have struck the words "...publicly available..." for clarity. "Distributing information" is more inclusive; no matter where information comes from, as long as it is authorized and qualified, it will be shared.

In Section 14.B(5) and (6), "Considerations," responding to comments from the State Forester, they added "watershed health" and "Impacts of wildfire on source water protection and water quality protection or improvement."

In Paragraph 14.C, Ms. Fox addressed the edit: "Council shall consider, with resources provided by New Mexico Interstate Stream Commission staff..." This is a clarification that staff will help provide resources to Councils to be able to consider the listed statewide objectives. Ms. Fox confirmed that "resources" includes Tools and Templates, guidance, staff time, and NMISC funding for facilitators or contractors. The remainder of the edits are meant to be grammatical. (Tr. Vol. 3, pp. 1007-1010)

In Paragraph 14.D, the proposed edits further clarify the discussion around the evolving state of science as we move into an era of more uncertainty. There will be data gaps, but we still need to move forward. The new sentence reads: "Councils may not delay the development

or updates to a plan due to data gaps." The intent of the Rule is that those gaps would be addressed as potential PPPs to be advanced.

In Section 15.A(1) the word "information" is removed to better align with the information that will be sought from WSTAC. Resources will be provided by the ISC; WSTAC may participate as they choose. Section 15.A(4) has the addition of "Nations, Pueblos, and Tribes" to include our sovereign partners. Section 15.A(5) clarifies that it is not just the comments of state and federal agencies, but any engagement, including local and Tribal. Section 15.A(7) adds "Council considerations of" to clarify that they want documentation of the consideration of balancing water uses and the needs of future generations. Section 15.A(8) has a formatting correction. Proposed language in 15.A(11) adds: "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." (Tr. Vol. 3, pp. 1010-1013)

Mr. Erdmann noted that compliance with "federal, Tribal, and local governments" would include Pueblos with "treatment as a state" status for water quality, really, in all their regulatory capacity as "States or Sovereigns." The Tools and Templates provide information regarding Pueblos, Tribes, and Nations with Tribal water quality standards. If not recognized in the Tools and Templates, and a Tribe, Pueblo, or Nation identified that they had water quality standards, this edit require that the regional plan document this information from a Tribal government. Tribal ecological knowledge has been developed over a tremendous amount of time, and would also be included here, among other places.

In 15.A(6), "Council Consideration," they have broken out "Public Welfare Values" and "future generations" into two separate items in response to extensive public comment and Commissioner questions. In 15.A(11), "Written Consent," the edit addresses comments by Pueblo leadership. (Tr. Vol. 3, pp. 1014-1018)

In 15.C, they have added language to clarify that it is three prioritized lists of Projects, Programs, and Policies based on Readiness, as they aim to capture projects beyond just shovel-ready projects. ISC Staff intends to capture the whole range or spectrum of completeness of projects within these three buckets to be prioritized within each Readiness bucket. PPPs can be and should be ideas, lots of ideas. The edits to Paragraphs 15.A, B, and C, are designed to address comments and questions by a number of Commissioners as to how this will work. They also intend to have a Template associated with this specific section, an Excel sheet so that it is very clear in the guidance how the Commission will be able to evaluate PPPs in a Plan. How Councils prioritize will be left to them, although different prioritization strategies will be provided in the organizational Templates. (Tr. Vol. 3, pp. 1019-1022)

Questioning of Program Staff Panel on Redirect

Regarding the statement in 15.C(6) that "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." Mr. Erdmann and Ms. Fox clarified that the subsection reference should point to both 10.B(3) and 9.B(5) in 19.25.16 NMAC. The operating principles of all Councils need to be determined ahead of time, so 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. (Tr. Vol. 3, pp. 1022-1024)

Staff's hope is that this gets worked out in advance, and there are many ways that prioritization could be done, with a scoring rubric, or voting, or consensus. There are many ways one can go about making decisions. Determining how subregional priorities will be folded in before forming a subregion will be important to the success of the subregion process so they don't end up showing up with a list and talking to a larger group that is uninterested in hearing their ideas. That needs to be worked out before they determine specifically the projects that they are working on. That is why it is a criteria for the Commission to consider upon making a subregion. Mr. Erdmann agreed it seems likely the Rules that would apply to a Council, the Council would apply to a subregion as to qualifying projects. There may be Councils who find avenues for decision-making other than what has been anticipated. (Tr. Vol. 3, pp. 1024-1027)

Ms. Fox agreed it was a great idea to offer some guidance to Councils to encourage a diversity of types of projects come forward in their PPP list such that they are not all just one sector: rank watershed projects, municipal projects, ag projects, etc. Staff would leave that up to the Council and how they would specifically want to do that prioritization. All they are requiring is that when a Water Security Plan comes before the Commission, they have it consolidated into three buckets.

Mr. Erdmann added there are many ways to prioritize; one possibility is to look at categories and decide in advance things such as, "30% of our money is going to ag projects, and 30% of it is going to go to municipal projects." He is not offering these as representative values; Councils will determine how to balance priorities and ensure that there is comprehensive

consideration of the range of water use in a community in the Region. This is clearly critical for success. (Tr. Vol. 3, pp. 1032-1034)

Mr. Erdmann and Director Riseley-White confirmed that they are trying to offer edits to be able to encompass San Juan Water Commission without excluding the other groups discussed, such as the Estancia Basin Water Planning Committee. The word “active” as to water planning does not require continuous activity, just activity at some point since the 2016/2017 planning cycle. Ms. Fox stated that the Excel template will be part of the organizational Templates described by Mr. Erdmann, not an addition to the Rule. (Tr. Vol. 3, pp. 1044-1048)

Director Riseley-White confirmed that staff is not proposing in their final edits to offer any changes to the delineations of the Regions, as Mr. Erdmann explained earlier. They recognize the concerns that have been raised and think they are important for the Commission to consider. The Director underscored the importance and significance of the Tribal Governors who testified and appreciated their engagement. She does think that some of the other proposals they made could potentially be addressed elsewhere, including the considerations related to weighted voting as an option in the organizational principles.

Mr. Erdmann and Director Riseley-White spoke to how the revisions offered address the concern of a Pueblo or Tribe that there is an infringement or impairment of their Tribal sovereignty or water right. Staff tried to address the issue two ways: in the Objectives section, to state explicitly that nothing happening as part of the planning process is going to impact settled water rights, Tribal or otherwise. The second piece is in Section 15.A(11), describing the opportunity for leadership of any Nation, Pueblo, or Tribe, to provide consent should one of the proposed projects implicate their resources. Plans “shall” document that consent. 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. Just because something is in a plan does not mean that it necessarily moves forward. Councils are not policymaking or action-taking bodies themselves; they are making a recommendation, including a list of PPPs. The advance of those PPPs will require funding; there may also be consideration of water rights administration or other issues. (Tr. Vol. 3, pp. 1050-1056)

Ms. Fox confirmed that the proposed edits include the addition of the Pecos Valley Artesian Conservancy District as a participant in 19.25.16.12.A(1)(e), at their request. Director Riseley-White agreed that the Commission has a lot to think about in terms of public welfare and the language in the Proposed Rule. She confirmed that the word "or" is changed to "and" in Section 12.A(1)(f) regarding "Regional Acequias and Community Ditches" in the latest edits. (Tr. Vol. 3, pp. 1059-1063)

Program Closing Statement

Ms. Becker offered a closing statement, in which she thanked the Commission for their active listening and discussion. She hopes the Commission heard through the Program testimony what a re-imagining opportunity this was, as directed by the Legislature, to find a middle ground from prior planning efforts and a vision of the future. She stressed that the Proposed Rule includes the minimum criteria set out in the Act regarding the establishment of boundaries and the number of Water Planning Regions; the criteria for Commission approval such that the Commission knows what is before them in a plan and what that would look like; and how to consider prioritized Projects, Programs, and Policies.

There is a procedure for a Regional Water Entity to develop and provide to the Commission a statement on Public Welfare. The composition of a Regional Water Planning Entity is set out, including elected officials as Representative Members, and why At-Large Members are important, and how they get selected. They are working on the documents that will give both substance and direction to the Councils and Commission for approval of the Plans, which are volunteer bodies choosing to come together to do this good work.

People asked for a transparent process, and staff testimony set out how the Proposed Rule came about. They worked hard to be as inclusive as possible, making sure, at every step and decision-making juncture, to explain what it is they were trying to do, and sought input. They also brought in contractors to ask, "How do we do this better? How do we make this the best Proposed Rule that we can?"

The proposed planning process is rigorous, but it is designed to be supported by Commission Staff without being dictated by staff, so that these Councils can get off the ground running and be equipped with what they need. Councils can ask for what would be most helpful in terms of assistance to generate PPPs with ideas and get the proposed multiple funders for implementation. There is more to come. Staff will be back before the Commission after a Rule is adopted for approval of related Guidelines. The Proposed Rule meets statutory requirements, and they believe really does all that it set out to do, integrating much of what was done before to build on prior efforts and really launch WSPA implementation. (Tr. Vol. 3, pp. 1065-1070)