

ATTACHMENT B--PROPOSED RULE WITH REVISIONS SUGGESTED BY NON-MOVANTS

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

19.25.16.1 ISSUING AGENCY: New Mexico Interstate Stream Commission, hereinafter the commission.

[19.25.16.1 NMAC – N, xx/xx/202x]

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

[19.25.16.2 NMAC – N, xx/xx/202x]

19.25.16.3 STATUTORY AUTHORITY: Section 72-14A-1, et seq. NMSA 1978.

[19.25.16.3 NMAC – N, xx/xx/202x]

19.25.16.4 DURATION: Permanent.

[19.25.16.4 NMAC – N, xx/xx/202x]

19.25.16.5 EFFECTIVE DATE: xxxxxxxxxxxx xx, 2025, unless a later date is cited at the end of a section.

[19.25.16.5 NMAC – N, xx/xx/202x]

[No commenter proposed revisions in Sections 19.25.16.1 through 19.25.16.5]

19.25.16.6 OBJECTIVE: The objective of this rule is to establish a framework for regional water security planning councils to develop, maintain, and aid in implementation and tracking of regional water security plans. This framework will be grounded in regional values, scientific consensus, and New Mexico water law. The processes outlined in this rule are intended to: ensure that the plans will be based on the best available science, data, and models regarding available water supplies, use, and trends; provide transparency and opportunities for meaningful input and participation by the public and Nations, Pueblos, and Tribes within each regional water security planning region; acknowledge the sovereignty, water rights, and water needs of tribal communities; consider public welfare and the needs of future generations of New Mexicans; align with state and federal laws; and identify and prioritize projects, programs, and policies that will help to ensure water security into the future. **Nothing in this rule supersedes or violates state water law regarding the role and authority of the state engineer or the doctrine of prior appropriation. Furthermore, nothing in this rule permits the condemnation of water rights, or determines, abridges or affects in any way the water rights of water right owners in the state, including water rights of Nations, Pueblos, and Tribes.**

[19.25.16.6 NMAC – N, xx/xx/202x]

[Responding to comments made during the hearing, the Program recommends adding the language in red, above, for clarification.]

[New Mexico Acequia Association (NMAA), New Mexico Acequia Commission (NMAC), New Mexico Land Grant Council (NMLGC), and the Rural Community Assistance Corporation (RCAC) suggest inserting the words “political subdivisions of the state” between the words “public” and “and Nations, Pueblos, and Tribes.” See pp. 1812, 1850, 1910, 1959]

[Aidan Manning for NM Willd and several other NGOs suggests deleting the word “and” after “public welfare” and inserting “safeguard water resources to meet” before the words “the needs of future generations.” Pp. 1787-1795.]

[New Mexico Water Advocates (NMWA) proposes to replace Section 6 entirely, stating that the Proposed Rule does not cite WSPA’s requirement, opportunity, and need for regions and communities to identify and address regional water problems, including current and growing water shortfalls. See PC101-102. To see all of NMWA’s revisions in one place, see PC098-125.]

19.25.16.6 OBJECTIVE:

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

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

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

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

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

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

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

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

19.25.16.7 DEFINITIONS:

A. “Commission” means the New Mexico interstate stream commission and its nine appointed members, authorized under Section 72-14-1 NMSA 1978.

[NMWA would insert additional definitions here for “Communities” and “Council,” among others, “to reduce the likelihood of multiple interpretations.” See PC103. Note that if the Commission accepts further definitions or recommended deletions that the necessary re-numbering and re-lettering of subsections will be handled later.]

“Communities” means geographically bounded communities and communities of interest within subregions, including users of a discrete groundwater resource, that are the centers of subregional water planning because water problems arise in communities and solutions to those problems must be shaped there.

“Council” means a body organized and convened in accordance with these Rules, with the authority and responsibilities delegated to regional water planning entities by the Water Security Planning Act and accountable for achieving the outcomes set forth in § 72-14A-5(B). The primary responsibilities of each Council are to assist and support the subregions and communities within its region in fulfilling their planning and implementation roles as agreed in work plans and to create and obtain approval of their regional water security plan that reconciles their water security problem analyses and solutions and presents their cooperatively developed, fully prioritized list of policies, programs, and projects (PPPs) to achieve the measurable mandatory outcomes.

B. “Initial planning period” means the time period from the establishment of each council to the approval of its first regional water security plan by the commission.

C. “NMISC staff” means the employees of the New Mexico interstate stream commission.

D. “Ongoing planning period” means any time period following the initial planning period for each council. The ongoing planning period begins once an initial regional water security plan is approved by the commission.

E. “Projects, programs, and policies” or “PPPs” or “PPP” means identified strategies and alternatives, including infrastructure projects, conservation programs, watershed or groundwater management policies, and other types of initiatives that will promote regional water security and are identified in the plans and PPP lists.

[NMWA would replace “Projects, programs, and policies” with separate paragraphs, PC103]

“Policy” means a definite course or method of action adopted by a governmental body under color of state law to guide and determine present and future decisions in managing water and related resources, specifying responsible entities and providing for implementation and compliance

“Project” means a discrete infrastructure project of any size, undertaken to deliver a defined outcome within a set timeframe; projects may be integral components of broader programs.

“Program” means an organized set of related policies and projects coordinated to achieve a defined goal or strategic objective in water management or planning.

[New Mexico Cattle Growers and NM Farm and Livestock Bureau encourage a definition of “public welfare.” NMCG suggests it include existing, traditional uses of water. Pp. 1801-1802]

[Environmental Defense Fund (EDF) encourages a statewide definition for public welfare values that shall be considered by councils. P. 1884]

F. “Regional water security plan” or “plan” means a plan produced by a council, that meets the requirements described herein and is approved by the commission.

G. “Regional water security planning council” or “council” means the members described herein who lead regional water security plan development, and aid in and track implementation of the plan in their respective region.

H. “Regional water security planning region” or “planning region” or “region” means an area of the state described herein that is the planning area for each regional water security planning council.

[NMWA would delete the definitions for “Regional water security planning council” and “Regional water security planning region” and insert definitions for “Regions” and “Subregions,” PC 103-104.]

“Regions” means the administrative planning areas delineated by the Commission as shown in Exhibit 1, Regional Boundaries Delineation (Exhibit I to the Rule), within which subregions and communities collaborate to prepare integrated, science-based water security plans. Each region is responsible for reconciling all subregional analyses and solutions into a unified set of prioritized policies, programs, and projects that achieve measurable outcomes at the regional scale, including the reconciliation of all water-overuse matters.

“Subregion” means a tributary basin, hydrologically or hydrogeologically distinct aquifer, or other coherent area within a planning region that encompasses one or more communities sharing related water sources, problems, and management needs. Subregions are essential building blocks of regional water security planning in large administrative regions, providing the scale at which locally grounded analyses and actions can be integrated into a coherent regional plan.

I. “Region-specific stakeholder” means a member of the public who is not a member of a council but has identified themselves to NMISC staff or a council as interested in engaging in the planning process for a specific region.

J. “Regional water utility authority” a regional water utility authority established by the Regional Water System Resiliency Act or the predecessor of that Act.

[19.25.16.7 NMAC – N, xx/xx/202x]

19.25.16.8 WATER SECURITY TRIBAL ADVISORY COUNCIL:

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

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

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

[19.25.16.8 NMAC – N, xx/xx/202x]

[The Pueblo of Laguna finds Section 8 unclear. What would the WSTAC do, and what is its relationship to the Commission and Councils? The functioning of WSTAC should be more clearly set out. Pp. 1903-1907]

19.25.16.9 REGIONAL WATER SECURITY PLANNING REGIONS:

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

B. ~~Subject to commission approval, if a council determines that To the extent that a~~
~~sub-regions may be beneficial for regional water security planning, thea cCouncils shallmay~~
~~request commission approval to regional water security planning regions may be subdivided~~
~~into establish a~~ sub-regions within a planning region or across multiple planning regions. In determining whether to approve a proposed sub-region, the commission shall use the following criteria:

(1) the basis ~~for the sub-region, such as hydrological reliance on the same~~
~~water source(s), existing water planning organizations, water rights adjudication or Indian~~
~~water rights settlement boundaries,~~ or otherwise, ~~for the sub-region and what the~~
circumstances ~~that~~ make the proposed sub-region distinct from the region;

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

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

(4) support from the associated council(s) for the proposed sub-region;

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

~~(6) whether the proposed subregion would enable more effective input into the regional water security program of tribal water concerns and the needs of tribal communities.~~

[19.25.16.9 NMAC – N, xx/xx/202x]

[Responding to comments made during the hearing, the Program recommends adding the language above for clarification. The Program incorporated suggestions from the Pueblo of Acoma for Subsection B, re: consideration of Indian settlements, p. 1935; Taos Pueblo, pp. 1877-1881, and Pueblo of Laguna, re: para (6), pp. 1903-1907. The Program edits appear to address WSTAC's concern in 9.B(6), albeit in different words. Pp. 1983-2001]

[NMWA states that Section 9 needs edits to allow for planning communities within regions or subregions, PC106]

19.25.16.9 REGIONAL WATER SECURITY PLANNING REGIONS:

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

B. Subject to commission approval, regional water security planning regions may be subdivided into sub-regions consistent with the definition in 19.25.16.7.M within a planning region ~~or across multiple planning~~

~~regions~~. In determining whether to approve a proposed sub-region, the commission shall use the following criteria:

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

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

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

~~(4) support from the associated council(s) for the proposed sub-region;~~

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

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

[The Albuquerque Bernalillo County Water Utility Authority (ABCWUA) recommends strengthening Section 9.B to better define subregions, the process for their establishment, and their integration into regional water plans. Pp. 1865-1876]

[Pueblo of Isleta suggests redrawing regional boundaries to ensure that the Middle Rio Grande region can effectively protect its own water resources, ecosystems, and cultural values. PC015-018.]

[Central TriCounty Soil and Water Conservation District support the request by Estancia Basin Water Planning Committee to refine basin boundaries based upon hydrological rather than political boundaries, and that Estancia basin remain separated from the basins to the south, rather than becoming part of the Central Basin Council. See Supplemental filing, p. 1]

[NM Cattle Growers urges defining regions by hydrologic units/acequia systems rather than metropolitan service areas; prohibit regional boundaries that subordinate predominantly agricultural and rural basins to metropolitan councils. Pp. 1801-1802]

[NMAA, NMAC, and RCAC suggest that the nine regions should overlap with or be contained within Council of Government regions, to ensure overlap of technical assistance and additional capacity. See pp. 1813, 1911, 1960]

[The San Francisco Soil and Water Conservation District (SFSWCD) states that their watershed and basin is hydrologically separated and the basin is fully adjudicated. The San Francisco basin and other distinct basins should be grnated automatic subregion status. Pp. 2047-2049]

[SWJC proposes edits to the exhibit attached to the Proposed Rule showing the Water Security Planning Regional Boundaries--SJWC proposes that the exhibit to the final Rule identify not only the boundaries of each planning region, but also all county boundaries and surface water and groundwater basin boundaries. These additions will assist the public in identifying counties and which water basins (or parts thereof) are located within each planning region. See pp. 1839-1843, 2041-2046]

[NMAANMAC, NMLGC, and RCAC propose a new Section 9, establishing a new group similar to WSTAC:

19.25.16.9 ACEQUIA AND RURAL WATER SECURITY ADVISORY WORKING GROUP

A. NMISC staff shall provide administrative support and facilitation, in coordination with the New Mexico Acequia Association, the New Mexico Acequia Commission, the New Mexico Land Grant Council, and the New Mexico Rural Water Association for the establishment and operation of the Acequia and Rural Water Security Advisory Working Group ("ARWSAWG") comprising of the appointed representatives of each Regional Water Security Planning Council that represents acequias, mutual domestics or community regional water systems, and land grant-mercedes.

B. The purpose of the ARWSAWG is to provide a forum for input from New Mexico acequias, mutual domestics or community water systems, and land grant-mercedes to ensure that their water rights, water needs, and viewpoints are considered and incorporated in regional water security planning and other related activities as determined by the commission.

C. The participating appointed representatives of the acequias, mutual domestics or community regional water systems, and land grantmercedes of each Regional Water Security Planning Council shall determine their own procedures and principles for the operation of ARWSAWG.
See pp. 1813, 1851, 1911, 1960]

[NMAA, NMAC, NMLGC, and RCAC also propose a new section 10, to establish a Regional Water Security Program Fund to carry out WSPA. No text was offered. See pp. 1813, 1851, 1911, 1960]

19.25.16.10 INITIAL PLANNING PERIOD: During the initial planning period,

A. Responsibilities of NMISC staff include:

(1) inviting governmental entities identified in Paragraph (1) of Subsection A of 19.25.16.12, NMAC to select their representatives, and convening a meeting of these representative members.

(2) assisting representative members in the invitation of at-large members, identified in Paragraph 2 of Subsection A of 19.25.16.12, NMAC, and non-voting members, identified in Paragraph (3) of Subsection A of 19.25.16.12, NMAC.

(3) acting as the commission's liaison to the councils for the purpose of ensuring the coordination of commission information, policies, and resources. Subject to adequate funding and resources, NMISC staff assigned to these tasks shall be located at an office of the state engineer district office within or near the region.

(4) providing administrative support and facilitation for at least four meetings of each council within the region per calendar year.

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

(6) developing and maintaining lists of region-specific stakeholders and notifying stakeholders of opportunities to engage in the planning process.

B. Responsibilities of the council include:

(1) once convened by the NMISC staff, the representative members shall invite, with NMISC staff support, and select at-large members as identified in Paragraph (2) of Subsection A of 19.25.16.12 NMAC. NMISC staff shall review membership and confirm compliance with Paragraph (2) of Subsection A of 19.25.16.12 NMAC.

(2) the representative members and the at-large members shall invite, with NMISC staff support, and select non-voting members as identified in Paragraph (3) of Subsection A of 19.25.16.12 NMAC.

(3) once the council has been formed through the convening, inviting, and selection of representative members, at-large members, and non-voting members, the council shall adopt and provide NMISC staff written operating principles that, at a minimum, describe the following:

- (a) the roles and responsibilities of the council's voting and non-voting members;
- (b) the duration(s) of the term(s) for council members;
- (c) the potential roles of committees, including a steering committee, sub-committees and/or work groups, if relevant;
- (d) the grounds and process for removing a member from the council;
- (e) the decision-making process to be used by the council to make planning recommendations and ultimately prioritize projects, programs, and policies; and

(f) the process for integration and engagement with commission approved sub-regions, if relevant.

C. Councils may choose to self-convene provided the composition set forth in Section 19.25.16.12 is adhered to and ~~the self-organized council is~~ confirmed by NMISC staff. [19.25.16.10 NMAC – N, xx/xx/202x]

[Responding to comments made during the hearing, the Program recommends adding the language above for clarification. WSTAC recommended language in 10.B(3)(e) regarding consent from Pueblos, Tribes, and Nations; that language appears in Section 15.A(11).]

[Some of WSTAC's concerns about regional boundaries and subregions have been addressed in the Proposed Rule, not all; WSTAC recommends 3 additional regions. See WSTAC pp. 1983-2001]

[EDF recommends that 10.A require ISC staff to review each region's proposed plan for inclusion of the required components in Section 15, prior to submitting the proposed plan to the ISC for technical content review and approval process. See pp. 1888-1889]

[Aidan Manning for NM Wild and other NGOs suggests 2 insertions in 10.A(5): "providing councils with technical support, including assistance with accessing the best available data and science, templates to guide decision making, information on funding sources, and compilations of existing plans and additional resources from inside and outside of state government." The Proposed Rule already includes another suggested edit in B(3)(e). Pp. 1787-1795.]

[ABCWUA recommends addressing ambiguity in 10.B(3)(c) by adding a definition or explanation in the rule or guidelines, with examples, of how a council can use a steering committee. Pp. 1865-1876]

[Trout Unlimited recommends in 10.B(3) identifying standards and/or best practices to be adopted across all planning councils for greater consistency and effectiveness. Pp. 1936-1940]

[NMAA, NMAC, NMLGC, and RCAC offered edits in Sections A(3) through (6) and B(3):
A. (3) acting as the commission's liaison to the councils for the purpose of ensuring the coordination of commission information, policies, and resources. Subject to adequate funding and resources, one NMISC staff shall be assigned to one planning region for the purpose of ~~to~~ these tasks and shall be located at an office of the state engineer district office within or near the region.

(4) providing administrative support and facilitation for at least four meetings of each council within the region per calendar year and in the convening of each councils' working groups.

(5) providing councils with technical support, including assistance with accessing the best available data and science, templates to guide decision making, convening working groups of the councils, and compilations of existing plans and additional resources.

(6) developing and maintaining lists of region-specific stakeholders, planning stakeholder engagement opportunities, and notifying stakeholders of opportunities to engage in the planning process.

B. (3)(b) the duration(s) of the term(s) for at-large council members;

And a new subsection (f) the process for integration and engagement to be used by the council for the inclusion of input provided by the WSTAC and ARWSAWG, and ... See pp. 1813-1815, 1851-1852, 1911-1912, 1960-1961]

[Pueblo of Laguna notes that although WSPA authorizes the ISC to make grants or loans for regional planning, nothing in the Rule addresses funding. Pp. 1903-1907]

[NMWA recommends the revisions shown below, stating that proposed Section 10 does not direct an adequate planning process. The paragraph envisions too much in-line ISC staff approval in what should be reserved as regional processes. Further, the paragraph omits many of the obligations that must be imposed upon the ISC staff and councils to specify functions, functionality, outcomes, and accountability to achieve legitimacy for the resultant planning. This will constitute a robust process resulting in water security plans whose implementation will yield water resiliency for the regions and the state. See PC107-110]

19.25.16.10 INITIAL PLANNING PERIOD: During the initial planning period,

A. The NMISC staff shall:

(1) provide grants to an appropriate fiscal agent within each region defined in 19.25.15.9 to allow the region to self-convene a broad public process, to establish the initial membership of the regional council consistent with the requirements of 19.25.16.12. If self-convening doesn't occur in a timely manner, NMISC staff may perform the convening.~~inviting governmental entities identified in Paragraph (1) of Subsection A of 19.25.16.12, NMAC to select their representatives, and convening a meeting of these representative members.~~

(2) provide grants to established Councils' fiscal agents for Councils to develop funding proposals that contain work plans for the Councils' water planning process and regional security water plan~~assisting representative members in the invitation of at-large members, identified in Paragraph 2 of Subsection A of 19.25.16.12, NMAC, and non-voting members, identified in Paragraph (3) of Subsection A of 19.25.16.12, NMAC.~~

(3) establish guidelines for recommended practices, protocols or requirements for regional councils to conduct their regional water security planning consistent with 72-14A NMSA and these rules.~~acting as the commission's liaison to the councils for the purpose of ensuring the coordination of commission information, policies, and resources. Subject to adequate funding and resources, NMISC staff assigned to these tasks shall be located at an office of the state engineer district office within or near the region.~~

(4) -prior to accepting any regional work plan funding proposals, develop guideline criteria for evaluating such proposals. These guideline criteria at a minimum shall provide for: ~~providing administrative support and facilitation for at least four meetings of each council per calendar year.~~

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

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

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

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

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

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

(7) support acquisition of state and federal implementation funding for approved regional water security plans. ~~developing and maintaining lists of region-specific stakeholders and notifying stakeholders of opportunities to engage in the planning process.~~

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

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

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

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

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

(b) expenditures to date

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

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

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

B. ~~Responsibilities of the~~ Once established with members through a broad convening process, each council shall include:

~~(1) — once convened by the NMISC staff, the representative members shall invite, with NMISC staff support, and select at-large members as identified in Paragraph (2) of Subsection A of 19.25.16.12 NMAC. NMISC staff shall review membership and confirm compliance with Paragraph (2) of Subsection A of 19.25.16.12 NMAC.~~

~~(2) — the representative members and the at-large members shall invite, with NMISC staff support, and select non-voting members as identified in Paragraph (3) of Subsection A of 19.25.16.12 NMAC.~~

~~(13) establish and update as needed its own operating rules or adaptation of NMISC staff-supplied templates for conducting water security planning which may include: once the council has been formed through the convening, inviting, and selection of representative members, at-large members, and non-voting members, the council shall adopt and provide NMISC staff written operating principles that, at a minimum, describe the following:~~

~~(a) the roles and responsibilities of the council's voting and non-voting members;~~

~~(b) the duration(s) of the term(s) and term limits if any for council members;~~

(c) methods for membership succession

~~(c) — the potential roles of committees, including a steering committee, subcommittees and/or work groups, if relevant;~~

~~(d) the grounds and process for removing a member from the council;~~

(e) mechanisms to assure ongoing membership balance consistent with 19.25.16.12.B

(f) meeting and operating rules

(g) needs for planning, technical and administrative staff,

(h) the potential roles of committees and work groups;

(i) procedures for administrative and financial management,

~~(je) the decision-making process to be used by the council to prioritize projects, programs, and policies; and~~

~~(kf) the process for integration and engagement with commission approved communities and any subregions, if relevant.~~

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

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

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

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

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

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

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

- (a) establishing a quantitative understanding of the legal, hydrologic, and demand attributes of the region, yielding knowledge of the region's water situation and problems,
- (b) extensive iterative interaction with NMISC staff, public, and communities by providing interim work products and ingesting inputs throughout the planning process,
- (c) developing a coherent statement of public welfare and values of the region in accordance with 19.25.16.17,
- (d) ensuring scientific integrity in the planning through use of data and models,
- (e) requesting technical support from NMISC staff as needed,
- (f) identifying potential infrastructure projects and administrative policies at regional and community levels to enhance regional water adaptability

- (g) evaluating, such projects and policies against multiple criteria
- (h) prioritizing such projects and policies in accordance with their evaluations,
 - (i) packaging groups of prioritized projects and policies into one or more alternative programs,
 - (j) modeling or otherwise evaluating the alternative to programs to determine that, if implemented, they would meet the statewide goals and outcomes developed under 19.25.16.10.A.(10)
- (k) selecting a preferred alternative program that best meets the declared public welfare of the region, and,
- (l) creating a detailed plan for implementation of the preferred alternative program.
- (7) Only if the regional council determines that implementation of a duly evaluated high-priority project or policy is sufficiently urgent, the regional council may pursue an interim plan element for that project or policy sooner than approval of the full regional plan. The interim plan element shall be submitted to the commission for approval, and, if needed, be subject to negotiated changes
- (8) develop a regional plan document in recognition of the approval criteria stated in 19.25.16.15 which regional plan shall include:
 - (a) the region's hydrological situation,
 - (b) the statement of public welfare of the region,
 - (c) description of the planning process that led to the regional plan,
 - (d) a description of each recommended policy and project,
 - (e) a summary of the project and policy evaluations,
 - (f) a prioritized list of recommended infrastructure projects for the region,
 - (g) a prioritized list of recommended administrative policies for the region,
 - (h) the preferred alternative program for the region, and,
 - (i) the implementation plan for the preferred alternative program.
- (9) submit the regional plan to the NMISC staff and commission for approval, and if needed negotiate changes to obtain NMISC staff and commission approval for implementation
- (10) provide quarterly summary progress reports to the NMISC staff including:
 - (a) use of funds,

(b) progress to date,

(c) any difficulties encountered and possible paths to resolution,

(d) cost or progress deviations from the proposed processes, cost to complete, and,

(e) near term plans.

~~C. Councils may choose to self-convene provided the composition set forth in Section 19.25.16.12 is adhered to and the self-organized council is confirmed by NMISC staff.~~

19.25.16.11 ONGOING PLANNING PERIOD: During the ongoing planning period.

A. Responsibilities of NMISC staff include:

(1) reviewing and confirming compliance with Subsection A of 19.25.16.12 NMAC for representation of representative and at-large members, when council vacancies are filled.

(2) providing administrative support and facilitation for at least two meetings of the council per calendar year during periods when the council is not in the process of updating a plan and providing at least four meetings of the council per calendar year when the council is in the process of updating a plan.

(3) providing councils with technical support, including assistance with accessing the best available data and science, decision-making guides, compilations of existing plans, and resources to aid in tracking and reporting on implementation.

(4) publishing all regional water security plans developed by councils and approved by the commission.

B. Responsibilities of the council include:

(1) filling vacancies on the council pursuant to Subsection A of 19.25.16.12 NMAC.

(2) preparing proposed regional water security plans and presenting proposed plans to the commission for ~~acceptance~~approval.

(3) preparing proposed updates to regional water security plans and presenting proposed updates to the commission for ~~acceptance~~approval.

(4) reviewing the operating principles for the council and making changes consistent with Paragraph (3) of Subsection B of 19.25.16.10 NMAC if needed.

(5) aiding in and tracking plan implementation, including outcomes.

(6) developing, reviewing, and updating PPP lists.

(7) developing and maintaining region-specific lists of stakeholders and providing information to stakeholders about opportunities to engage in the planning process. The council may request NMISC staff support to carry out these responsibilities.

C. Councils shall report to the commission by June 30 of each year on the progress of planning activities, status of plan implementation, and outcomes.

D. During the ongoing planning period, councils shall update plans at least once every ten years. Councils shall review and update PPP lists at least once every 5 years.

[19.25.16.11 NMAC – N, xx/xx/202x]

[Responding to comments made during the hearing, the Program recommends adding the language above for clarification.]

[Aidan Manning of NM Wild and other NGOs suggests 2 revisions to A(3) as follows: providing councils with technical support, including assistance with accessing the best available data and science, information on funding sources, decision-making guides, compilations of existing plans, including inside and outside of state government, and resources to aid in tracking and reporting

on implementation. In Subsection B(7) Dr. Manning suggests the insertion of the words “and Council activities” after the words “planning process.” In Section C Dr. Manning suggests the inclusion of the words “and steps taken to ensure stakeholder and public input throughout the planning process.” Pp. 1787-1795.]

[NMAA, NMAC, NMLGC, and RCAC suggest adding at the end of A(2) “and providing assistance for the operation of the councils’ working groups.” And a new subsection A(4): “providing administrative support, facilitation, and technical support to the councils for carrying out Subsection B of 19.25.16.12 NMAC.” In Section C, NMAA suggests inserting “funding recommendations” in the list of things to be reported to the Commission. See pp. 1815, 1853, 1913, 1962]

[NMWA recommends revisions as shown below, stating that Section 11 is probably premature and would be better written in a few years after we all become smarter. It doesn’t hurt to leave it in at this time. As written the subparagraphs are too prescriptive in some places (as in meetings) and too silent in noting needs for funding, etc. in other places. See PC111-112]

19.25.16.11 ONGOING PLANNING PERIOD: During the ongoing planning period.

- A. ~~Responsibilities of The~~ NMISC staff ~~shall include:~~
- (1) ~~reviewing and confirming compliance with Subsection A of 19.25.16.12 NMAC for representation of representative and at-large members,~~ when council vacancies are filled.
 - (2) providing administrative support and facilitation for councils as requested ~~at least two meetings of the council per calendar year during periods when the council is not in the process of updating a plan and providing at least four meetings of the council per calendar year when the council is in the process of updating a plan.~~
 - (3) ~~providing~~ provideing councils with technical support as requested, including assistance with accessing the best available data and science, decision-making guides, compilations of existing plans, and resources to aid in tracking and reporting on implementation.
 - (4) ~~publishing~~ all regional water security plans developed by councils and approved by the NMISC staff and commission.
 - (5) subject to appropriations, provide funding grants to regional councils consistent with submitted proposed work plans.
- B. ~~Responsibilities of t~~ After approval of the initial water security plan, each council shall perform a continued publicly interactive planning process which may include ~~he council include:~~
- (1) proposing work plans to NMISC staff for funding ongoing efforts
 - (2) monitoring changes to water supply and demand

(3) addressing newly recognized issues at community and regional levels

(4) filling vacancies on the council as they occur in accordance with pursuant to Subsection A of 19.25.16.12(-A). NMAC.

(5) preparing proposed regional water security plan updates and presenting proposed plans to the NMISC staff and commission for implementation approval acceptance.

(6) preparing proposed updates to regional water security plans and presenting proposed updates to the NMISC staff and commission for approval acceptance.

(7) reviewing the operating principles for the council and making changes consistent with Paragraph (3) of Subsection B of 19.25.16.10 NMAC if needed.

(8) aiding in and tracking plan implementation, including outcomes.

~~(6) developing, reviewing, and updating PPP lists.~~

(9) developing and maintaining region-specific lists of stakeholders and providing information to stakeholders about opportunities to engage in the planning process. The council may request NMISC staff support to carry out these responsibilities.

(10) updating plans at least once every ten years.

(11) providing semi-annual summary reports to the NMISC staff reflecting:

(a) use of funds,

(b) progress to date,

(c) any difficulties encountered,

(d) cost or progress deviations from the proposed processes, cost to complete, and,

(e) near term plans.

~~C. Councils shall report to the commission by June 30 of each year on the progress of planning activities, status of plan implementation, and outcomes.~~

~~D. During the ongoing planning period, councils shall update plans at least once every ten years. Councils shall review and update PPP lists at least once every 5 years.~~

19.25.16.12 COMPOSITION OF REGIONAL WATER SECURITY PLANNING COUNCILS:

A. Councils shall comprise three categories of members: representative members, at-large members and non-voting members. Representative members and at-large members shall be voting members of a council. If a qualified or willing representative member, as described in Paragraph (1) of Subsection A of 19.25.16.12 NMAC or at-large member, as described in Paragraph (2) of Subsection A of 19.25.16.12 NMAC cannot be identified by the council, the council may propose or NMISC staff may select a replacement non-voting member who is knowledgeable about water resources in the region.

(1) Representative members. Each governmental entity listed below, if present within the region, is entitled to have a representative serve on the council for any planning region within which it is located. A single representative may represent multiple governmental entities. In the event that a governmental entity is located in multiple regional water security planning regions, the governing body may appoint the same or different representatives to each council. Each representative member shall be appointed by resolution or official action of each governmental entity's governing body. Representative members will consist of the following:

(a) one representative member identified by the governing body of each municipality;

(b) one representative member identified by the governing body of each county;

(c) one representative member identified by the governing body of each irrigation-district, artesian conservancy district, or conservancy district;

(d) one representative member identified by the governing bodies of each Nation, Pueblo, and Tribe;

(e) one representative member identified by the governing bodies of each soil and water conservation district;

(f) one representative member of each regional acequia and community ditches association in the planning region or if no regional acequia and community ditches association exists in a planning region, one representative from that region appointed by the New Mexico Acequia Commission; ~~and~~

(g) one representative member from an active land grant appointed by the Land Grant Council in a planning region; ~~and~~

(h) one representative member identified in Chapter 4, NMSA 1978, or Chapter 72, NMSA 1978 governing bodies of each -flood control authority or agency; and-

(i) one representative member identified by the governing body of any regional water utility authority.

(2) At-large members. Up to ten at-large members shall represent each of the following stakeholder groups. There shall be one at-large member position for each stakeholder group, but members may represent multiple stakeholder groups. The stakeholder groups to be represented are:

- (a) ranchers in the region;
 - (b) farmers in the region (these farmers may include 4H, Young Farmers, etc.);
 - (c) statewide or regional public higher education institutions (such as a student, professor, administrator, etc.);
 - (d) environmental, conservation, or ecosystem interests located ~~water advocacy non-governmental organizations with members or local chapters~~ in the region;
 - (e) water-based sporting or recreational interests located in the region (fishing, rafting, etc.);
 - (f) mutual domestic water consumer associations or community regional water systems in the region;
 - (g) commercial, industrial, mining, and power in the region;
 - (h) special districts established pursuant to Chapter 73, NMSA 1978, with staff whose responsibilities include water management, located in whole or in part within the region, and that do not fall within the previous membership categories within Paragraph (1) of Subsection A of 19.25.16.12. Should there be no representative pursuant to ~~these~~ these criteria for the region, this becomes a general at-large member;
 - (i) existing regional water planning steering committees ~~who that~~ have been active continuously operated since the conclusion of the 2014-2016 regional water planning effort. Should there be no regional water planning steering committee in the region, this becomes a general at-large member; and
 - (j) one general at-large member in the region.
- (3) Non-voting members. Up to ~~six~~ six non-voting members representing parties from outside the region with water interests in the region. These ~~six~~ six non-voting members shall comprise up to three non-voting members for entities outside the region that own water rights within the region, and up to ~~three~~ three non-voting members from other water security planning councils hydrologically linked to the region.

B. Region-specific stakeholders. Lists of region-specific stakeholders shall be developed and maintained by NMISC staff and shared with councils. The identification of region-specific stakeholders shall, at a minimum, include:

- (1) an email point of contact; and
- (2) documentation including a physical address, residential or professional, within the region; or
- (3) written statement of interest identifying the individual or entity and explaining why the individual or entity is interested in engaging in the region's planning process.

[19.25.16.12 NMAC – N, xx/xx/202x]

[Responding to comments made during the hearing, the Program recommends adding the language above for clarification. The Program incorporated proposed edits for the Eastern New Mexico Water Utility Authority, pp. 1834 and 1892; and the Pecos Valley Artesian Conservancy District, pp. 1893-1895; and ABCWUA pp. 1865-1876 re: WUA representation.]

[Elaine Hebard suggests restoring the water advocacy non-governmental organizations in 12.A(2)(d). PC054]

[NMAA, NMAC, and RCAC suggest deleting ~~“qualified or willing representative member, as described in Paragraph (1) of Subsection A of 19.25.16.12 NMAC”~~ in 12.A. to honor representative members’ own governing authority. Its suggestion to insert “or official action” in A(1) was already incorporated. They suggest moving a representative member from a mutual domestic water consumer association or community regional water system from being an at-large member to being a representative member of the councils; and adding “watershed restoration organizations” as an at-large member. NMLGC joins the others as to the movement of a mutual domestic water consumer association representative being moved from at-large to representative member. See pp. 1817, 1915, 1964, 1855]

[ABCWUA recommends ensuring manageable Council size; modify 12.A(1) to either set an upper limit on voting members or to explicitly permit a representative structuring of seats so each region can tailor its Council size to 15-25 voting members at most. ABCWUA further recommends addressing the vagueness of 12.A(2)(i)—Re: one at-large slot for a legacy steering committee that may no longer exist. See pp. 1865-1876]

[The Program accepted 2 of the 4 edits suggested by Dr. Manning in this Section; the 2 outstanding suggestions are to add the words “in the region” at the end of Subsection (2)(c), and “who represents grassroots or community water needs” at the end of Subsection (2)(j). PP. 1787-1795.]

[Trout Unlimited suggests in Section 12.A that each of the at-large members should be required to reside within the region they are appointed to. See pp. 1936-1940]

[EMNRD State Parks Division would like to be included in regional water security planning where one or more state parks exist. The Parks Division proposes to add this language to proposed 19.25.16.12(A)(1) NMAC as a new subsection: (h) one representative member identified by the state parks division of the energy, minerals and natural resources department for planning regions that have one or more state parks;]

[EMNRD Forestry Division would like to be included in regional water security planning based on several factors that are listed below. The Forestry Division proposes to add this language to proposed 19.25.16.12(A)(1) NMAC as a new subsection: (i) one representative member identified by the forestry parks division of the energy, minerals and natural resources department to address wildfire and watershed risks and mitigation. Specifically, the Forestry Division has identified these areas of concern to address;]

[San Juan Water Commission and water lawyer Liz Taylor urge the addition of two additional representative members in Subsection A:

(a) 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 that region appointed by the New Mexico Rural Water Users Association; and

(hi) one representative from each additional political subdivision located in whole or in part within the planning region not falling within the previous membership categories.

PP. 1839-43, 2041-2046]

[NM Cattle Growers suggests requiring that each council include acequia/ditch association(s), agricultural producers (row, forage, dairy, beef, sheep) and livestock/rangeland interests with minimum seat allocations and voting commensurate with traditional utilization. P. 1801]

[Mark Fischer, Chair of the Lincoln County Commission, questions the standing of statewide or regional public higher education institutions (such as a student, professor, administrator, etc.); or environmental, conservation, or water advocacy non-governmental organizations with members or local chapters in the region; these non-constituent groups should not be voting members of Regional Water Security Planning Councils. Pp. 1804]

[David Carmichael of Las Cruces: some of largest users of water (farmers, ranchers, miners, and other industrial users) would be overrepresented on the Planning Councils as proposed. Proponents of non-consumptive water uses, such as wildlife habitat management, outdoor recreation, birding, and ecological science interests should be better represented than they are. It seems that all of the disciplines involving special expertise are outweighed by the number of political leaders included. p. 1807]

[Laura Watchempino of the Pueblo of Acoma: Membership on the Regional Planning Committees should be as diverse and inclusive as possible, to avoid overrepresentation by the largest and most powerful water users and political leaders in a planning region at the expense of smaller water users and proponents of non-consumptive water uses that promote sustainable stream systems and the ecosystems and cultural uses that they support. P. 1935]

[Pueblo of Laguna wonders if Councils will be too large to develop plans, and the manner in which technical support is provided by ISC staff should be more clearly set out. They also believe the task of the Northwest Regional Council will be virtually impossible, considering Indian water rights settlements and inclusion of lands not covered by settlements. At a minimum, the Rio San Jose basin should be set aside as a separate region or subregion. Pp. 1903-1907]

[NMWA recommends replacement of Section 12 to provide criteria for, rather than specification of, Council membership, stating that the current Proposed Rule overweights the balance away from actual stakeholders, and specifies too much complexity, unnecessary ISC staff involvement, and an unwieldy set of council members unlikely to create an agreed-upon useful product. See replacement Section 12 below. See PC113-114]

19.25.16.12 COMPOSITION OF REGIONAL WATER SECURITY PLANNING COUNCILS:

Membership of a regional council shall be determined within the region with support as needed from the NMISC staff, subject to the following:

- A. A regional council shall be self-selected and composed of at least six individual members and not more than twenty individual members having needed expertise. Each member may designate an alternate with similar interests to serve in the member's absence
- B. The set of members collectively must represent water interests in the region, balanced for the region, among residential, community, commercial, agricultural, natural, technical and institutional interests, including water right owners and groundwater permit holders who depend on the shared water supplies of the region.:
- C. In the event of conflict about membership balance or quantity within a region, the NMISC staff shall mediate, or arbitrate if necessary, to resolve the controversy.
- D. Regional councils may hire planning, technical and administrative staff.

19.25.16.13 REGIONAL WATER SECURITY PLANNING COUNCIL MEETING AND INPUT REQUIREMENTS:

- A.** Councils shall hold regularly scheduled meetings as follows:
- (1)** meetings shall be held at least four times per year during periods when the region's plan is being developed or updated.
 - (2)** meetings shall be held at least two times per year during periods when the plan is not being developed or updated.
 - (3)** councils shall provide at least 14-day notice of meetings or other activities to council members, the public, region-specific stakeholders, Nations, Pueblos and Tribes, and the commission, with NMISC staff support as needed.
 - (4)** councils, with NMISC staff support, shall offer meetings for hybrid participation if practicable.
- B.** Councils shall develop regional water security plans through broad input. This shall include opportunities for the public, region-specific stakeholders, and Nations, Pueblos, and Tribes to be involved in the development, vetting and prioritization of PPPs. During the plan development or update of any plan, councils shall, with NMISC staff support, at a minimum:
- (1)** notify the public, region-specific stakeholders, and Nations, Pueblos and Tribes, including by distributing ~~publicly available~~ information regionally about the development of the plan, and opportunities for input, at regular intervals.
 - (2)** provide in-person and virtual opportunities for input at council meetings.
 - (3)** provide a minimum of 60 days for the public, region-specific stakeholders, and Nations, Pueblos and Tribes to provide input in person, via email, or through a website on proposed regional water security plans.
 - (4)** make comments publicly available ahead of finalization of a regional water security plan to be presented for commission approval.
- C.** Councils shall consider a broad range of participation options for input, which may include but are not limited to:
- (1)** providing materials in languages in common use within the region (e.g., ASL, Spanish, Tewa, Navajo).
 - (2)** hosting additional meetings, focus groups, listening sessions, open houses or other events.
 - (3)** providing engagement resources (e.g., presentations, paper surveys) to local community partners with existing connections in rural areas.
 - (4)** providing multiple in-person opportunities distributed throughout the region and expanded strategies for community engagement.
 - (5)** providing meeting spaces or computer access and connectivity for remote participation.

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

- (1) educational content; and
- (2) multimedia advertising of engagement opportunities.
- (3) additional opportunities may be developed at the determination of the

council.

[19.25.16.13 NMAC – N, xx/xx/202x]

[Responding to comments made during the hearing, the Program recommends adding the language above for clarification.]

[The Eastern NM WUA and the Pueblo of Acoma suggest that council meetings be held within the region they serve. This approach would enhance accessibility for local stakeholders and foster meaningful engagement, consistent with the rule’s stated goals of transparency and inclusive participation. Pp. 1892, 1935. Note that the Proposed Rule does contain such language in Section 10.A(4), above.]

[WSTAC suggests requiring in Section 13 that regional councils confer with WSTAC and affected Nations, Pueblos, and Tribes at three stages: (i) plan initiation, (ii) prior to publication of a draft plan, and (iii) prior to submission of a final plan to the Commission. Pp. 1983-2001]

[ABCWUA suggests that Council requirements are too intense and could overwhelm Council capacity. The Commission should scale back or add flexibility to the meeting and input mandates. NMISC should also commit to provide greater support and resources to Councils. Pp. 1865-1876.]

[Dr. Manning suggests edits in Section A(3): councils shall ~~provide at least 14 day notice of meetings~~ follow the provisions of the Open Meetings Act to notice all meetings and formal ~~or other~~ activities to council members, the public, region-specific stakeholders, Nations, Pueblos and Tribes, and the commission, with NMISC staff support as needed. Pp. 1787-1795.]

[EDF suggests that the Rule require at least one public meeting during plan development and another for each update, dedicated to presenting the draft plan and receiving public comments. These public meetings should be conducted prior to submission of the plan to the ISC for approval. All other council meetings should designate time for public comments. P. 1889]

[NMAA, NMAC, NMLGC, and RCAC suggest inserting the words “and public comment opportunities” following the word “input” in the first line of 13.B, B(3), and C. See pp. 1819, 1857, 1917, 1966]

[Trout Unlimited generally cautions against too many requirements placed on councils in this section without a clear sense of ongoing NMISC staff support and capacity, pp. 1936-1940]

19.25.16.14 CONSIDERATIONS FOR COUNCILS DURING PLANNING PROCESSES:

A. Councils shall consider, with resources provided by NMISC staff, the following information for inclusion in regional water security plans:

- (1) existing water plans and water resources planning initiatives;
- (2) compliance with state water law, including recognition of established water rights;
- (3) best available science for considering climate resiliency and increasing aridification;
- (4) recognition and respect of federally recognized or reserved tribal water rights;
- (5) access to water for domestic use;
- (6) compliance with applicable federal water law;
- (7) public welfare values;
- (8) balancing water uses and the needs of future generations of New Mexicans; and
- (9) public participation and comments.

B. Councils may consider the following information for inclusion in any regional water security plan:

- (1) best available resources or methodologies for considering the needs of rural and urban places and populations within the region;
- (2) groundwater management strategies and needs;
- (3) regional food security and agricultural resilience;~~and~~
- (4) water needs for healthy upland, wetland, and riparian habitats;~~and~~
- (5) watershed health and the impacts of wildfire on source water protection;
- and
- (6) water quality protection or improvement.

C. Councils shall consider, with resources provided by NMISC staff, the following statewide objectives in any regional water security plan:

- (1) state obligations under interstate compacts;
- (2) compliance with the Endangered Species Act and the prevention of serious harm to the habitats of species that are threatened or endangered under state or federal law;
- (3) compliance with and implementation of water rights settlements, including locally and federally executed Indian water rights settlements;
- (4) the state's existing administration plans under the Active Water Resources Management program.

D. Councils shall develop and update regional water security plans as provided herein using the best available science, data, and models, and may identify data gaps and

recommend further studies in their regional water security plans. Councils may not delay the development of or updates to a plan due to ~~lack of~~ data gaps.
[19.25.16.14 NMAC – N, xx/xx/202x]

[Responding to comments made during the hearing, the Program recommends adding the language above for clarification. The Program incorporated suggestions from WSTAC, pp. 1983-2001; Taos Pueblo, pp. 1877-1881; and Pueblo of Laguna in C(3), pp. 1903-1907]

[NMWA proposed revisions to Section 14, stating that Subparagraph C allows councils to treat the stated statewide objectives as optional in contradiction of the requirements of WSPA 4.B.(9).(b). Section D requires councils to conduct planning without the benefit of needed hydrological data contrary to WSPA 4.B.(7) requirement for scientific integrity. See PC116]

19.25.16.14 CONSIDERATIONS FOR COUNCILS DURING PLANNING PROCESSES:

- A. Councils shall consider, with resources provided by NMISC staff, the following information for inclusion in regional water security plans:
 - (1) existing water plans and water resources planning initiatives;
 - (2) compliance with state water law, including recognition of established water rights;
 - (3) best available science for considering climate resiliency and increasing aridification;
 - (4) recognition and respect of federally recognized or reserved tribal water rights;
 - (5) access to water for domestic use;
 - (6) compliance with applicable federal water law;
 - (7) a consensus definition of the region's public welfare values;
 - (8) balancing water uses and the needs of future generations of New Mexicans; and
 - (9) public participation and comments.
- B. Councils ~~may~~ shall consider the following information for inclusion in any regional water security plan:
 - (1) best available resources or methodologies for considering the needs of rural and urban places and populations within the region;
 - (2) groundwater management strategies and needs;
 - (3) regional food security and agricultural resilience; and
 - (4) water needs for healthy upland and riparian habitats and wetlands.
- C. Councils shall comply with ~~consider~~ the following statewide objectives in any regional water security plan:

- (1) state obligations under interstate compacts;
- (2) compliance with the Endangered Species Act and the prevention of serious harm to the habitats or wetlands of species that are threatened or endangered under state or federal law;
- (3) implementation of water rights settlements, including local and federally executed Indian water rights settlements;
- (4) the state's existing administration plans under the Active Water Resources Management program.

D. Councils shall develop and update regional water security plans as provided herein using the best available science, data, and models. Councils shall identify data gaps and seek further studies in their regional water security plans to fill such data gaps.

[Environmental Defense Fund (EDF) suggests adjusting the wording of 14.D to "Councils shall develop and update regional water security plans as provided herein using the best available science, data, and models, and should update plans as new data becomes available. Councils shall ~~may~~ identify data gaps and recommend and pursue funding for implementation of further studies in their regional water security plans to address any data gaps." EDF also suggests that it be required that all plans include the items listed in Sections 14(A) and B. See. pp. 1887-1889]

[New Mexico Department of Game and Fish (NMDGF) recommends adding to Section 14.A the statement that Councils shall consider, with resources provided by NMISC staff, "best available science regarding the water needs of native fish, wildlife, and their habitats." Fish and wildlife must be considered by Councils during the planning process. Failure to do so may result in more cases like that of the Rio Grande silvery minnow, whose water needs were neglected until the fish was seriously imperiled and water was overallocated in the Middle Rio Grande. Pp. 1755]

[Dr. Manning suggests 2 edits in Section 14.B: "Councils shall consider the following information for inclusion in any regional water security plan, or document when information is insufficient to be able to fully consider:....." and in Subsection B(4): "water needs for healthy upland and riparian habitats, including the best available science regarding the water needs of native fish, wildlife, and their habitats." In Section C, Dr. Manning suggests the insertion of the words "or at risk of future listings" at the end of C(2). Pp. 1787-1795]

[NM Cattle Growers suggests requiring public release of all model inputs/assumptions (ET rates, efficiency, climate scenarios) and a formal agricultural sector technical review before PPP approval. Pp. 1801-1802]

[Trout Unlimited suggests 3 items for Section 14.A: 1) NMISC should support regional councils in an assessment of existing surface and groundwater supplies, existing levels of use, and a projection of future needs at the onset of developing regional water plans, and throughout the planning process. 2) Add the consideration of best available science regarding the water needs of native fish and wildlife. 3) Combine Sections B and A to mandate that Councils consider groundwater, agriculture, and fish and wildlife habitat. Pp. 1936-1940]

[SFSWCD suggests including this statement for consideration by planning councils: "The public's welfare is best served by protection of the prior appropriation doctrine and the property rights in water." All other references to public welfare should be deleted unless pertaining to specific projects. Section 14 should allow for greater autonomy of councils to procure their own information to better reflect the conditions and resources within their regions; and include "creation of incentives" for water conservation. pp. 2047-2049]

19.25.16.15 CRITERIA FOR APPROVAL OF REGIONAL WATER SECURITY PLANS: In order to be approved by the commission, a regional water security plan must meet the following criteria:

A. Plans shall include documentation of the following items:

- (1) Water Security Tribal Advisory Council (WSTAC) engagement, involvement, ~~information~~ and recommendations including WSTAC responses to those comments, and documentation of any unresolved opposition;
- (2) public notice under Section 19.25.16.13;
- (3) stakeholder engagement in the development, vetting and prioritization of PPPs;
- (4) comments received, considered, and incorporated from stakeholders, ~~and the public,~~ and Nations, Pueblos and Tribes;
- (5) engagement with and comments received from state, federal, tribal, and local governments ~~and federal agencies;~~
- (6) council consideration of public welfare values;~~;~~
- (7) council consideration of balancing water uses and the needs of future generations of New Mexico in the region, ~~if any;~~
- (~~7~~8) ~~C~~council committees, working groups and/or sub-regions, if applicable, within a region;
- (~~8~~9) consideration of the regional water balance, including any projected reductions in water availability due to the impacts of climate change or other factors; ~~and~~
- (~~10~~9) compliance with statewide objectives identified in Paragraph C of Section 14: ~~and-~~
- (11) 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.

B. Plans may include documentation that the needs of rural and urban populations within the region were considered.

C. Plans shall include ~~three~~ a numerically-ranked lists of ~~prioritized~~ proposed projects, programs, and policies ~~with each item ranked individually relative to all other PPPs on that sub-list~~ that will identify the region's priorities for promoting regional water security. The lists must incorporate proposed PPPs for the entire planning region, including sub-regions, if any wide.

(1) The three prioritized lists of PPPs ~~included in each plan~~ shall ~~also~~ be ~~organized~~ categorized as follows based on the readiness of ~~each individual the~~ PPPs as follows:

- (a) ideas stage;
- (b) scoping stage; and
- (c) ready to proceed stage.

(2) Each proposed PPP must list the sponsor(s) that intends to lead settlements of the PPP, including obtaining and administering any necessary funding for the PPP.

~~(3) PPPs shall be sorted by priority into the following readiness stages:~~

~~(a) ideas stage;~~

~~(b) scoping stage; and~~

~~(c) ready to proceed stage.~~

(43) PPP types include, but are not limited to, projects, programs, and policies that address the following:

(a) watershed health

(b) drinking water

(c) storm water

(d) wastewater

(e) water retention and delivery infrastructure

(f) water conservation resulting in a reduction of total water use

(g) education

(h) efficiency resulting in a reduction of total or per-capita water use

(i) water reuse

(j) aquifer storage and recovery

(k) aquifer recharge and groundwater sustainability

(l) agricultural water use resilience

(m) development of new water resources

(n) river, wetland, and riparian habitat restoration and connectivity

(o) livestock water management

(p) alternative water administration strategies (under Active Water Resources Management, water markets or banks, voluntary shortage sharing, etc.)

(q) drinking water system regionalization

(r) asset management planning

(s) scientific water studies

~~(t) water related natural or green infrastructure~~

(54) Additional documentation for each PPP may include:

(a) existing or potential funding, including funding to match state or federal resources;

(b) ability to enhance regional water resilience or have long-lasting and sustainable benefits;

(c) the presence of multiple benefits or ability to meet multiple objectives;

(d) substantial support from diverse stakeholders; or

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

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

~~(76) Councils with sub-regions shall integrate all sub-regional priorities into a single prioritized list of PPPs for submittal to the commission with their plan. The p~~Processes for resolving consolidating and ranking sub-regional priorities into the PPP list for the planning region alongside the recommendations of the rest of the region or other sub-regions within the region shall be resolved by the council pursuant to its operating principles, as provided for in Paragraph (5) of Subsection B of 19.25.16.9 NMAC and Paragraph (3) of Subsection B of 19.25.16.10 NMAC.

[19.25.16.15 NMAC – N, xx/xx/202x]

[Responding to comments made during the hearing, the Program recommends adding the language above for clarification. Program edits incorporated WSTAC's edit in 15.A(1); pp. 1758-1759 from Rio Grande Return; p. 1768 from Valencia SWCD; pp. 1754-1756 from NMDGF. Pueblo of Laguna's and Isleta's suggested revisions for Section 15.A appear to have been addressed, although the proposed language has changed since they submitted their comment, see pp. 1903-1907. WSTAC's suggested language in Sections A and C re: requiring documentation of implementation of water rights settlements and PPP ranking may be addressed in part by the provision requiring documentation of consent.]

[WSTAC's proposed insertion for 15.C tracks WSPA C(9)(b): "Plans shall include a list of prioritized proposed projects, programs, and policies with each item ranked individually relative to all other PPPs on that sub-list region wide. The relative rankings of PPPs shall be consistent with statewide objectives for regional water security plan development, including compliance with interstate compacts, the federal Endangered Species Act of 1973 and congressionally authorized tribal water settlement acts. PPPs that support the implementation of federally approved Indian water rights settlements shall be identified as such, and councils shall ensure that these PPPs are incorporated into the prioritized list and assigned a priority readiness stage." See pp. 1983-2001. Taos Pueblo offers the same edit, pp. 1877-1881.]

[Taos Pueblo suggests a new para. D: "Plans shall comply with congressionally authorized Indian water rights settlements." Pp. 1877-1881]

[NMAA, NMAC, NMLGC, and RCAC suggest the insertion of a new second subparagraph under 15.A: "(2) Acequia and Rural Water Security Advisory Working Group (ARWSAWG) engagement, involvement, information, and recommendations." See pp. 1820, 1858, 1918, 1967]

[ABCWUA recommends the addition of clear, detailed evaluation and approval criteria for regional water plans, including specific objectives and metrics. ABCWUA also sets out suggestions for guidelines and a pilot review of plans to identify gaps. In 15.C, ABCWUA suggests revising the Rule to explicitly state the intended uses of PPP lists. Pp. 1865-1876]

[NMDGF recommends adding “environmental flows” as an additional PPP type. Environmental flows--water allocated to remain in the river channel to benefit fish and wildlife species--are considered a beneficial use of water, an important tool for efforts to maintain water quality, river health, and ecosystem function, and vital in the recovery of aquatic species. Pp. 1754-1756. See also Trout Unlimited’s similar suggestion, pp. 1936-1940]

[Trout Unlimited has additional suggestions for expanding C(1) in relation to the factors listed in C(5), on documentation: the concepts in C.5 are important and risk being undervalued; nothing requires their inclusion in the prioritization process. Leveraging funds, enhancement of water resilience and long-lasting impact, the presence of multiple benefits, support from diverse stakeholders, and the enhanced benefits of bundling PPPs, should be used to inform the prioritization process. Pp. 1936-1940]

[Dr. Manning suggests in Section A(7): “council consideration of balancing water uses and the needs of future generations of New Mexico in the region, ~~if any,~~ “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.” In Section B: “Plans ~~may~~ shall include documentation that the needs of rural and urban populations within the region were considered, or documentation that information was insufficient to fully consider.” In Section C: “Plans shall include a list of prioritized proposed projects, programs, and policies with each item ranked individually relative to all other PPPs region wide, as well as within three sublists.” Dr. Manning would restore the word “also” in the first line of C(1). In Section C(4) Dr. Manning’s edits have mostly been accepted, except for “environmental flows” as a type of PPP. In Section C(5), Dr. Manning suggests: “Additional documentation for each PPP ~~may include~~ shall consider the following, with the understanding that data availability and relevancy will vary:” And a new (5)(c): “consideration of any positive and negative socio-economic, environmental, or cultural impacts associated with the PPP.” Pp. 1787-1795]

[NM Cattle Growers urges three edits in Section 15: 1) emphasis in the rule text that regional plans/PPPs cannot be used to justify or fast-track inter-basin or rural-to-urban transfers/leases that impair existing rights or rural community water security. 2) The scoring rubric in Subsection C should be included in the rule for consideration and prioritization of traditional uses. 3) Before approving a regional plan, require an equity impact statement that quantifies the effects on agricultural acres, ditch deliveries and rural domestic systems plus mitigation of harms identified. Pp. 1801-1802]

[SFSWCD suggests in 15.C(7) that PPPs developed for a subregion should be given greater weight than being integrated into the single prioritized list of PPPs. Integration defeats the planning for a sub region. Pp. 2047-2049]

[EDF suggests ISC provide in 15.C a clear set of criteria for consideration in the PPP prioritization process, beyond readiness, to include consideration of data and capacity gaps that can be improved; other factors could include, e.g., long-term water savings. In 15.C(4) EDF recommends adding a project type for “monitoring aquifer health and improving sustainable groundwater management” to allow for a greater range of methods to monitor, protect and manage groundwater more sustainably. EDF suggests adding modelling and mapping alongside scientific studies on the list of eligible PPP types: “(s) scientific studies, including modelling and mapping.” In 15.C(5) EDF suggests that the optional items should be required documentation for each PPP, to ensure transparency of the council’s process and considerations for prioritizing the PPPs in the region. Pp. 1890-1891]

[NMWA proposes revisions to Section 15 below, adding new subparagraphs A and B and making other edits, stating that the Proposed Rule specifies needed content of the plans but does not provide criteria by which the commission should approve/disapprove the plan. Those criteria should ask the commission to evaluate the sufficiency of the planning process and the effectiveness of the plan recommendations. They also recommend a correction of the cross reference in Subparagraph C(7) to match their recommendations for 19.25.16.10. PC117-120]

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

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

- (1) evenly balanced participation: the regional council sought, documented, considered and acted upon stakeholder and public voices,**
- (2) transparency: the regional council regularly brought the water security planning program work and progress to the public and facilitated public participation and comments**
- (3) a scientific foundation: water security planning has taken full cognizance of the scientific foundation for planning provided by the ISC staff and commission and the regional plan demonstrates scientific integrity,**
- (4) formal evaluation: proposed policies and projects that have been well vetted and grouped into alternative programs, including a no action**

alternative program, from which a preferred alternative program has been selected,

(5) public welfare: the regional council's planning developed and adhered to a statement of current and future public welfare of the region as specified in 19.25.16.17,

(6) tribal sovereignty: the regional council's planning took into account ongoing cognizance of tribal sovereignty and interests within the particular region, and,

(7) natural water uses: the regional planning identified groundwater/aquifer, riverine, riparian habitat, and wetlands impacts and addressed how those impacts would be limited and balanced under reduced water availability due to increasing temperatures and aridity.

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

(1) close the gap between overall regional water demand and regional water supply,

(2) address any significant intraregional gaps between supply locations and demand locations,

(3) increase the long-term viability of the water planning region's water supplies and the water adaptability for current and future generation users,

(4) provide for reliable domestic water supplies for rural communities,

(5) protect riverine, wetlands, and riparian habitat and species values,

(6) include groundwater management plans,

(7) for regions containing perennial streams, surface water management plans,

(8) for regions containing interstate perennial streams, assure ongoing compliance with interstate compacts,

(9) achieve consistency with community, municipal and institutional water plans within the region, and,

(10) provide for the regional council to lead and manage regional plan implementation, monitor and report the outcomes, and prepare amendments and updates to the approved regional plan.

CA. To meet the approval criteria in 19.25.16.15.A and 19.25.16.15.B, Plans shall include documentation of the following items:

(1) Water Security Tribal Advisory Council (WSTAC) engagement, involvement, information and recommendations;

- (2) public notice under Section 19.25.16.13.A.(3);
- (3) stakeholder engagement in the development, vetting and prioritization of PPPs;
- (4) comments received, considered, and incorporated from stakeholders and the public;
- (5) comments received from state and federal agencies;
- (6) council consideration of public welfare values, balancing water uses and the needs of future generations of New Mexico in the region, if any;
- (7) Council committees, working groups and/or sub-regions, if applicable, within a region;
- (8) consideration of the regional water balance, including any projected reductions in water availability due to the impacts of climate change or other factors; and
- (9) compliance with statewide objectives identified in Paragraph C of Section 14.

DB. Plans shall include documentation that the needs of rural and urban populations within the region were considered.

EC. Plans shall include a list of prioritized proposed projects, programs, and policies with each item ranked individually relative to all other PPPs on that sub-list region wide.

~~(1) — The prioritized list of PPPs included in each plan shall be organized based on the readiness of each individual PPP.~~

(12) Each proposed PPP must list the sponsor(s) that intends to lead implementation of the PPP, including obtaining and administering any necessary funding for the PPP.

(23) PPPs shall be classified in accordance with~~sorted by priority into~~ the following readiness-to-implement stages:

- (a) ideas stage;
- (b) - whether or not it is fully scoped; and
- (c) ~~ready to proceed~~rapidly implementable if funded stage.

(34) PPP types include, but are not limited to projects, programs, and policies that address the following:

- (a) watershed health
- (b) drinking water
- (c) storm water
- (d) wastewater
- (e) water retention and delivery infrastructure

- (f) water conservation resulting in a reduction of total water ~~use~~depletions
 - (g) education
 - (h) efficiency resulting in a reduction of total or per-capita water use
 - (i) water reuse
 - (j) aquifer storage and recovery
 - (k) aquifer recharge
 - (l) agricultural resilience
 - (m) development of new water resources
 - (n) river and riparian habitat and wetlands restoration
 - (o) livestock management
 - (p) alternative water administration strategies (under Active Water Resources Management, water markets or banks, voluntary shortage sharing, etc.)
 - (q) drinking water system regionalization
 - (r) asset management planning
 - (s) scientific studies
- (45)** Additional documentation for each PPP ~~may~~if appropriate shall include:
- (a) existing or potential funding, including funding to match state or federal resources;
 - (b) ability to enhance regional water resilience or have long-lasting and sustainable benefits;
 - (c) the presence of multiple benefits or ability to meet multiple objectives;
 - (d) substantial support from diverse stakeholders; or
 - (e) identification of interrelated PPP's and potential enhanced benefits of implementing multiple PPPs in conjunction with each other.
- (56)** Councils may elect to repeat PPP list items in subsequent plans and updated PPP lists.
- (67)** Councils with sub-regions shall integrate all sub-regional priorities into a single prioritized list of PPPs for submittal to the commission with their plan. Processes for resolving sub-regional priorities alongside the recommendations of other sub-regions in the region shall be resolved by the council pursuant to its operating principles, as provided for in Paragraph (1) of Subsection B of 19.25.16.10 NMAC.

19.25.16.16 STATE ENGINEER CONSIDERATION OF REGIONAL ISSUES OF PUBLIC WELFARE IN PERMITTING DECISIONS:

A. The state engineer, in its decisions on permit applications under Sections 72-5-6; 72-5-7; 72-5-23; 72-5-24; 72-5A-6; 72-6-5; 72-12-3; 72-12-7; and 72-12B-1 NMSA 1978, ~~may~~ shall consider issues of public welfare of a water planning region identified by a council if the state engineer determines that such regional issues are related to or may impact the public welfare of the state.

B. A council's determination shall not be binding on the state engineer's determination of whether a particular permit application would be detrimental to the public welfare of the state.

C. The state engineer, in determining whether a regional public welfare issue identified by a council is relevant to the determination of whether a particular permit application would be detrimental to the public welfare of the state, shall explain the reasoning in writing.

[19.25.16.16 NMAC – N, xx/xx/202x]

[Responding to comments made during the hearing, the Program recommends adding the language above for clarification.]

[San Juan Water Commission and water lawyer Liz Taylor suggest deleting Section 16 in its entirety. Under state law, the ISC has no authority over the State Engineer's permitting decisions. WSPA establishes the scope of the ISC's authority under the Act, and does not address the State Engineer's consideration of regional public welfare issues in permitting decisions. Section 72-14A-3 states that nothing in the Act shall be construed "as determining, abridging or affecting in any way the water rights of water right owners in the state." It is improper to adopt a rule indicating what information the State Engineer "may" consider when making a permitting decision and requiring the State Engineer to explain her reasoning concerning "whether a regional public welfare issue identified by a council is relevant to the determination of whether a particular permit application would be detrimental to the public welfare" If public welfare considerations identified in regional water security plans are to be part of the State Engineer's public welfare analysis, then such requirement should be mandated by the Legislature, especially given the fact that different planning regions may reach opposite conclusions on public welfare. See pp. 1839-1843, 2041-2046]

[The Pueblos of Acoma, Laguna, Sandia, and Taos also recommend deletion. The WSPA does not authorize the Commission to establish procedures for the State Engineer's determination of public welfare in water rights permitting. Pp. 1877-1881, 1935, 1900-1902, 1903-1907]

[Laura Watchempino of Pueblo of Acoma: Regional Plans should also include a list of proposed projects, programs, and policies that have been prioritized in accordance with statewide objectives for regional water security plan development, including compliance with interstate compacts, the federal Endangered Species Act of 1973, AND Congressionally authorized tribal water rights settlement acts. See Section 72-14A-4.C(9)(b) NMSA 1978. P. 1935]

[NMWA recommends replacement of Section 16, stating that WSPA 4.C.(1).(c) asks for a procedure to report planning issues to the commission and the Proposed Rule does not appear to address that requirement. WSPA 4.C.(1).(e) asks councils to consider public welfare for their region. It does not seek to provide guidance or direction to the State Engineer for her interpretation of Public Welfare of the State. The intent is to have each region decide what its public welfare and values are, for use in conducting the planning and in evaluating alternative recommendations. NMWA also recommends the creation of a new paragraph 19.25.16.17 to address the matter of public welfare of the region, below. See PC120-121]

19.25.16.16 PROCEDURE FOR REGIONAL WATER SECURITY PLANNING COUNCILS TO DEVELOP AND PROVIDE NOTICE TO THE NMISC STAFF OF ISSUES STATE ENGINEER CONSIDERATION OF REGIONAL ISSUES OF PUBLIC WELFARE IN PERMITTING DECISIONS:

- A.** The issues to be reported may include problems such as:
- (1) needs for state level technical assistance or financial assistance,
 - (2) difficulties in supporting at risk communities within the region,
 - (3) delays affecting timely work product deliveries, or,
 - (4) difficulties in coordination with internal or adjacent water planning agencies.
- ~~The state engineer, in its decisions on permit applications under Sections 72-5-6; 72-5-7; 72-5-23; 72-5-24; 72-5A-6; 72-6-5; 72-12-3; 72-12-7; and 72-12B-1 NMSA 1978, may consider issues of public welfare of a water planning region identified by a council if the state engineer determines that such regional issues are related to or may impact the public welfare of the state.~~
- B.** In response to reported issues, the NMISC staff shall promptly take necessary action to resolve the issue and get the regional council back on track.
- The actions may include
- (1) negotiated revision of the approved work plan,
 - (2) supplemental funding
 - (3) negotiation or mediation support, or,
 - (4) provision of technical advice, data and modeling.

~~A council's determination shall not be binding on the state engineer's determination of whether a particular permit application would be detrimental to the public welfare of the state.~~

~~C. The state engineer, in determining whether a regional public welfare issue identified by a council is relevant to the determination of whether a particular permit application would be detrimental to the public welfare of the state, shall explain the reasoning in writing.~~

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

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

At a minimum, aspects to be considered for possible inclusion shall include:

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

[San Juan Water Commission and water lawyer Liz Taylor propose to add a severability clause to the Rule to ensure that the Rule will continue in effect if a court determines that one section is invalid and cannot be enforced. Pp. 1843, 2044]

19.25.16.17 SEVERABILITY CLAUSE: If any section, paragraph, clause, or provision of 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 this Regional Water Security Planning Rule.]

HISTORY OF 19.25.16 NMAC: [RESERVED]