

ITEMS TO REVISIT DURING DELIBERATIONS DAY 2

1. Will Rule refer to what is contained in guidelines? If so, where does this need to be added?
2. Correspondence between Rule and WSPA
 - a. Public Welfare WSPA 4.C.(1)(c) – rule that contains procedure for a council to develop and provide notice to commission of issues and concerns relating to public welfare
 - b. Process for approval of grants or loans – 4.C(2)(d) - guidelines
 - c. Engagement with acequia communities and rural communities – 4.C(5) & (6)
3. Guidelines for the planning process and commission approval of a plan
4. Funding not addressed
5. Subregion not defined
6. How will WSTAC engage in the planning process?
7. How will sub-regions be integrated into the Plan?
8. Map boundaries

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

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

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, political subdivisions of the state, 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.

19.25.16.7 DEFINITIONS:

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

REVISIT WHETHER TO ADD DEFINITION FOR SUBREGION

[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]

REVISIT

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).

REVISIT – APPEAL PROCESS IF A COUNCIL DETERMINES THAT A REQUEST TO FORM A SUB-REGION SHOULD NOT BE PRESENTED TO THE COMMISSION FOR APPROVAL

B. If a council determines that a sub-region may be beneficial for regional water security planning, the council shall request commission approval to establish a sub-region 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, or current or future water rights adjudication or Indian water rights settlement boundaries, or otherwise, and 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]

RELATED TO FORMATION OF SUB-REGIONS

[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]

REVISIT

[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]

19.25.16.10 INITIAL PLANNING PERIOD: During the initial planning period,

A. Responsibilities of NMISC staff include:

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(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 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, if any;
- (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 confirmed by NMISC staff.

[19.25.16.10 NMAC – N, xx/xx/202x]

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 approval.

(3) preparing proposed updates to regional water security plans and presenting proposed updates to the commission for 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]

REVISIT AND CONFIRM EDITS

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,~~ or water commission established by joint powers agreement;

(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 or conservation; ~~or ecosystem interests organizations 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 meeting~~ these criteria for the region, this position 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 position becomes a general at-large member; and

(j) one general at-large member in the region.

(3) Non-voting members. Up to six five non-voting members representing parties from outside the region with water interests in the region. These six five 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 threetwo 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]

[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]

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]

[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]

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END OF DELIBERATIONS DAY ONE

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
(65) 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:

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- (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]

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[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]

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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~~ccouncil 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 pProcesses 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, Pplans 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.~~

UPDATED WITH DRAFT REVISIONS FROM DAY 1 OF DELIBERATIONS
NOT FINAL –ADDITIONAL REVISIONS MAY BE MADE

(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]