

**STATE OF NEW MEXICO
INTERSTATE STREAM COMMISSION**

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

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

Movant

No. NMISC 25-01 (R)

**ORDER ON NMWA’S MOTION TO INTERVENE
AND OTHERWISE ADJUST THE HEARING PROCESS**

This matter comes before the Hearing Officer on a motion filed October 6, 2025 by New Mexico Water Advocates (NMWA). Having reviewed the Motion, the Commission’s Response, NMWA’s Reply, and being otherwise advised, I am denying the Motion for the reasons set out in the Response, specifically as follows:

1. In its Motion NMWA seeks to change the nature of the proceeding as publicly noticed under the Default Rulemaking Rules, as set out in Section 1.24.25 NMAC, which apply to this proceeding. There are other procedural rules for hearings before other agencies in which persons or organizations may be recognized as “parties;” witnesses are sworn in by oath or affirmation; “technical” testimony and evidence are distinguished from “non-technical” evidence and comment; and “parties” may cross-examine every witness by entering an appearance. Unlike the procedures applicable to the Commission’s rulemaking in this matter, those proceedings are conducted under procedural rules that expressly provide for each of these practices. See, for example, 20.1.1 NMAC and 20.1.6 NMAC, the rulemaking procedures for the Environmental Improvement Board and the Water Quality Control Commission, respectively.

2. Although there is no provision for “intervention” or the right to witness confrontation in the rules applicable to this proceeding, NMWA is not, as they state, precluded from offering whatever testimony they would like to offer in support of their views on the proposed rule, whether they would characterize it as “technical,” “expert,” or otherwise. NMWA does not need to prove standing or that they are an “affected party” in order to participate in the proceeding through its presentation. Nor are they precluded from offering rebuttal testimony as appropriate and allowed by the Hearing Officer based on the development of the evidentiary record October 15-17. In the event NMWA believes the record should be kept open for a specific purpose after October 17, they may make that request at the end of the hearing.
3. A review of the written testimony and supporting documentation submitted by the Commission ahead of its presentation at hearing reflects a lengthy and robust campaign to engage the public on the proposed rule, contrary to NMWA’s description of the rule’s development. The suggestion that the foundational record is so deficient that the public hearing should not proceed as planned is without basis.
4. NMWA’s assertion that the proposed rule is arbitrary and capricious because the basis for adoption of the rule has not yet been set out in detail is premature. It is the Commission that will decide based on the record before it whether to adopt the rule as proposed, not to adopt it, or to adopt it with changes. Following its deliberations, a statement of reasons will be prepared that sets out the bases for its decisions; those bases will be drawn from the record made and the course of the deliberations. Detailed supporting evidence is not required as part of the petition for rulemaking, but must be presented during the hearing. In this case, Commission staff submitted two binders of its detailed documentation and

full narrative of its anticipated testimony on October 1, much of which was shared publicly over the past year in meetings and on its webpage.

5. The proposed rule does not, as NMWA asserts, clearly fail to meet the statutory requirements of the Water Security Planning Act. NMWA is invited to continue to press their arguments on this point, and to present any related evidence or testimony; again, the proposed rule is not so clearly lacking that the hearing should not proceed. The Commission has set out on pp. 8-10 of its Response compelling arguments as to how relevant statutory mandates are woven throughout the proposed rule.

NMWA's motion to intervene is denied. NMWA is invited to present any relevant testimony it wishes, technical or otherwise, regarding the contents of the proposed rule.

-signed by-
Felicia L. Orth, Hearing Officer