

August 25, 2018

Submitted via ISC web page

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New Mexico Interstate Stream Commission
Santa Fe, New Mexico

Dear Ms. Sanchez:

By this letter, the Middle Rio Grande Water Advocates¹ (MRGWA) submits its comments on the 2018 draft State Water Plan that the Interstate Stream Commission (ISC) released for public review and comment on July 9, 2018. The 2018 draft does not include most of the content required by the State Water Plan Act, NMSA §72-14-3.1. Its title does not describe its contents.

This situation is due in part to woefully inadequate appropriations by the legislature to complete the water planning the Act requires and that New Mexico truly needs. It is due in part to reduced agency staffing and budgets overall. We acknowledge the hard work of the ISC's Water Planning Program Manager and other authors efforts to prepare this draft for review.

INTRODUCTION

The draft plan's first two sentences are really not true. The state of New Mexico is not actively planning for its water future. The state as a whole does not have adequate supply to meet its current demands. The challenges that the plan does not address include the fact that New Mexico's current water demand exceeds the physically and legally available sustainable water supply.

The draft plan is not the strategic management tool required by §72-14-3.1. The plan says it, "fulfills many purposes of the State Water Plan Act," "provides descriptions of proposed water resource management policies," "provides foundational technical information about water resource conditions," and "provides summary information about historic decisions in New Mexico water law." It is not a plan to change New Mexico's current water resource administration to what is needed to address New Mexico's water resource limitations, unsustainable current uses, and the impacts of global warming and climate change. No parts of the three-volume plan contain specificity regarding the necessary changes nor the steps and resources required to implement the necessary changes.

¹ Formerly the Middle Rio Grande Water Assembly. The MRGWA has been focused on New Mexico water planning since 1997.

The draft plan's statements and concepts illustrate this disparity between hydrologic reality and the plan's material omissions. The plan's unsupported assertion of adequate supply to meet current demands is unbelievably different from its projection that, "all planning regions in New Mexico are projected to have less than 75% of the necessary supply to meet demands in 2060 under the drought scenario."

The plan does not include a vision of what the state and its water planning regions need to do, specifically, to address these gaps between supply and demand. Although the plan recognizes the need for more detailed water budgets and models, it does not provide a specific path to develop them or estimate the organizational and financial resources required. It assembles recommendations from the water planning regions but does not provide any evaluation or prioritization of them. It makes recommendations pertaining to the eight policy topics it addresses, which do not include essential elements such as demand management, but does not prioritize them or provide a path or schedule to implement them.

DRAFT PLAN DOES NOT MEET ITS LEGAL MANDATE

The State Water Plan Act §72-14-3.1 requires the ISC in collaboration with the State Engineer and the Water Trust Board to prepare and update a comprehensive state water plan. The Act lists eight purposes, 14 required topics, and four broad initiatives the Act deems essential and requires specific work plans and strategies to complete. The Act requires direct consultation with Indian nations, tribes and pueblos, requires the ISC to ensure public participation and input throughout the planning process, and requires periodic reviews, updates and amendments adopted every five years, at a minimum. The draft plan does not meet these requirements.

The most serious omissions of the Act's requirements include:

1. Meeting the state's interstate compact obligations, purpose #6 from the Act, is omitted from the list of purposes stated in the draft plan, which does not substantively address this topic, much less present a plan to meet compact obligations. Compact compliance is a severe problem currently in the Lower Rio Grande and a severe future problem in the Middle Rio Grande.
2. The 2018 draft plan does not address or meet many of the other purposes of the State Water Plan as defined in the Act. One of these purposes is to provide "statewide continuity of policy and management relative to our water resources." The draft plan does not mention the 2003 State Water Plan or provide any progress report, although many of the draft plan's strategies are the same but without a path for implementation.
3. A clear vision and policy direction for active management of the state's waters, topic #2, is lacking. The plan contains no discussion of active water resources management.
4. Water budgets for all major river basins and aquifer systems in the state, topic #4, are not provided. The draft plan admits "the recently completed regional water plans did not

attempt to develop water budgets in the traditional sense.” Yet the draft plan omits discussion of what is needed to develop the required budgets. It doesn't describe or critically evaluate the water budget work and aquifer mapping program results funded by the Legislature nor the need or amount of needed future appropriations.

The draft plan states “the regional water planning boundaries” are problematic for the purpose of developing water budgets yet doesn't recommend changes in regional water planning boundaries.

Areas such as Placitas, which support a significant population with groundwater supplied from an aquifer that is not major but is experiencing shortfalls or is suspected to have a limited remaining lifetime, should be identified and water budgets prepared for them also.

5. A current drought management plan, topic #6, is omitted. The 2006 Drought Plan's findings were repeated but its recommendations or an update of progress are not included.
6. The plan does not recognize nor mention the relationship between water availability and land-use decisions, topic #7.
7. Riparian and watershed restoration that focuses on protecting the water supply, topic #8, is addressed conceptually but without any specificity regarding what is needed. No mention is made of the 2005 specific recommendations of the Middle Rio Grande Collaborative Program, sponsored, funded, and staffed by the ISC.
8. Water rights transfer policies that balance “the need to protect the customs, culture, environment and economic health and stability of the state's diverse communities while providing for timely and efficient transfers of water between uses to meet both short-term shortages and long-term economic development needs, topic #9, are entirely neglected.
9. Strategies and mechanisms for achieving coordination at all levels of government, topic #10, are omitted.
10. Integration of plans of water supply purveyors as they are submitted, topic #12, is not addressed.
11. Despite the requirement in 72-14-3.3 C~~subsection C. of the Act~~ that the ISC "develop river reach or ground water basin priorities for the acquisition of water or water rights and storage rights for the Strategic Water Reserve," there is no mention of the Strategic Water Reserve other than listing it as a tool.
12. Work plans and strategies addressing completion of water rights adjudications, creation and completion of a comprehensive database and electronically accessible information system on the state's water resources, the specific requirements of the Act in subsection D., are not addressed.

13. Public participation and public input integrated throughout the planning process were not utilized in the ISC's development of the 2018 draft. The ISC's December 2017 State Water Plan Town Hall developed 12 high priority consensus recommendations for action, yet the 2018 draft plan contains no listing or evaluation of them nor the other specific Town Hall recommendations.

ADMINISTRATIVE WATER SUPPLY

The plan's stated water supply shortfalls of 75% minimum by 2050 are due to flaws in the ISC's Administrative Water Supply concepts, which also are the origin of the false statement in the second sentence of the plan that New Mexico's current water supply is adequate. The OSE/ISC prepared an Administrative Water Supply for each water planning region in New Mexico and required its use by the water planning regions. Problematic Administrative Water Supply concepts include that the current water supply for each region is its current water use and that the worst projected aquifer drawdown within a region would occur throughout it. A former Director of the ISC speaking at a New Mexico Water Dialogue annual conference admitted the flaws of this approach and attributed them to the inadequacy of agency resources to provide reliable water supply and demand data and scientifically-based water supply projections.

The remedy is to evaluate the best quality data available for each basin and to recognize and prioritize improvements in data and models that must be collected or developed to adequately define the gaps between projected water supply and water demand. The 2018 draft seems to admit these shortcomings yet does not address this or any other remedy.

WATER USE METERING AND REPORTING

The once-every-five-years water use report laboriously compiled by the OSE from estimates and metering reports should be replaced by prompt annual summaries of reliable measurements of all diversions for the diversion component. The water use reports do not deal with consumptive use or overall depletions but they should. The future focus should be to measure diversions and focus the analytical work of the OSE on consumptive use, which must be estimated for almost all diversions. The most recent OSE water use report currently available is for 2010.

We commend the ISC and the plan for recommending, without qualification, metering of all diversions, a foundational first step toward water resource administration. This is excellent, but the plan is silent regarding the steps the state should take implement this foundation or to consolidate, summarize, and make available the resulting information for water planning and management purposes.

DEMAND MANAGEMENT

The draft 2018 plan omits any serious discussion of demand management but promotes supply increases that would be marginal at best, such as from produced water (discharge into the

Pecos River) or treatment and use of saline groundwater. Red herrings such as increasing the water supply from produced water or desalination are a distraction from the hard work of demand management.

Active Water Resources Management, which was a focus of the 2003 State Water Plan, is not addressed at all in the 2018 draft plan except for a short description of the concept and its history in the legal volume. Demand management is essential, especially in the Lower Rio Grande and the Middle Rio Grande and in areas where excessive groundwater pumping will leave essentially nothing in the relatively near future. The NM Supreme Court in 2012 upheld the law and the 2004 Rules to implement priority administration or the preferred functionally equivalent demand planned agreement that the rules named Alternative Administration.

REGIONAL WATER PLANNING BOUNDARIES

New Mexico's regional water planning boundaries were selected by the regions in response to the 1980s initial statutory authorization for regional water planning, with minor subsequent changes. Changing regional water planning boundaries were a focus of the 2017 State Water Plan Town Hall background report and consensus recommendations, yet the draft plan does not address this important topic. While the existing boundaries for many planning regions with small populations served by groundwater from closed basin aquifers or adequate surface water may be appropriate, other boundaries are highly inappropriate. Most importantly, the Lower Rio Grande and the Middle Rio Grande must each be a single water planning region to deal with the essential topic of constraining demand to the legally available supply for the purpose of Rio Grande Compact compliance.

DRAFT PLAN IGNORES THE 2003 STATE WATER PLAN AND UPDATES

It appears that the 2018 draft was written from scratch, as if it were the first. Given the paucity of resources available and the requirements of the State Water Plan Act that the initial plan be updated and amended, that is inappropriate and wasteful. The 2003 plan was in fact a strategic plan and contained implementation plans and schedules. The 2018 plan should update and amend the 2003 plan and report progress on its good work, rather than ignore it.

TRANSPARENCY AND PUBLIC PARTICIPATION

Apparently, the ISC has guided preparation of the 2018 draft state water plan, without public participation except for the Town Hall, by the ISC's non-quorum water planning committee. This committee meets frequently in secret, except for a cursory sentence or two regarding some meetings stated orally at ISC meetings. Instead, the ISC should conduct the very important public business of guiding the State Water Plan and formulating state water policy in public, with public participation.

Public participation programs for the State Water Plan should meet the requirements of the State Water Plan Act "to ensure that public participation and public input are integrated throughout the planning process."

CLIMATE CHANGE

Warming will materially increase evapotranspiration, which will cause both increased demand and reduced supply. Water models, water budgets, and the State Water Plan must recognize and address this major problem.

PART 3 SECTION 10 "THE RISE OF ENVIRONMENTALISM"

The final section of Part 3 lacks the objective professional writing style found in the other sections. Instead it provides a very subjective and rather negative tone, which we suggest is inappropriate for this, or any, state document. We recommend that this section be revised to include an objective presentation. We also suggest that the existing title for this section does not parallel the style of other titles of Part III and should be revised to be more parallel in style to the other sections of Part III. Perhaps replace "The Rise of Environmentalism" with something like, "Environmental Laws and Regulations."

RECOMMENDATIONS

1. The ISC should post all comments pertaining to its 2018 draft state water plan on its web site, along with its staff's responses.
2. The ISC should, in a noticed open public meeting attended by a quorum of ISC members, invite and hear oral summaries of comments and staff's responses.
3. The ISC should deliberate and determine, in an open public meeting, whether or not the 2018 draft meets its statutory mandate. To the extent it does not, the ISC should direct changes to bring the draft into compliance, integrating public participation as required by §71-14-3.1.
4. Only then should the ISC consider amendment or adoption of the 2018 draft.

CONCLUSIONS

2018 finds New Mexico engaged in Rio Grande Compact litigation with Texas in the U.S. Supreme Court with no effective constraints on groundwater pumping in the Lower Rio Grande and not only the dissipation of large cumulative compact delivery credits from the Middle Rio Grande but also the first existence since 1990 of a cumulative delivery shortfall. New Mexico's land commissioner is suing its state engineer to reduce water permits for massive new fracking uses. Groundwater mining is rapidly draining aquifers throughout the state. Increasing temperatures are decreasing snowpack and river flows. The Albuquerque National Weather Service recently tweeted that "Through July 2018, New Mexico has been the warmest on record. The same is true for the past year, 2 years, 3 years, 4 years and 5 years!"

These issues are real. We cannot afford to continue to conduct ineffectual planning that does not develop solutions to our difficult problems. The State must adequately fund planning to

materially address the critical water management and administration issues it faces, per the requirements of §72-14-3.1. Water planning must be converted from production of plans as its purpose and end. Instead, water planning should thoughtfully identify solutions to our water supply gaps based on hydrologic reality, with public participation, for implementation.

We hope that these comments will help guide and motivate the necessary changes that are necessary to protect public health, safety, and welfare.

Sincerely,

Bob Wessely
President, Middle Rio Grande Water Advocates