

STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION

No. WQCC 21-51(R)

IN THE MATTER OF PETITION TO
DESIGNATE SURFACE WATERS OF THE
UPPER PECOS WATERSHED AS
OUTSTANDING NATIONAL RESOURCE WATERS,

Village of Pecos, San Miguel County, Upper Pecos
Watershed Association, New Mexico Acequia
Association, and Molino de la Isla Organics LLC,

Petitioners.

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 12th day of
April, 2022, this matter came on for hearing before
GREGORY CHAKALIAN, Hearing Officer, virtually through
Cisco Webex Meetings video conferencing, at the hour of
9:30 a.m.

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1 A P P E A R A N C E S (Continued)

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ADMITTED

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1 CHAIR STRINGER: Okay. Next on our agenda is
2 the hearing in the matter of the petition to designate
3 the surface waters of the Upper Pecos watershed as
4 Outstanding National Resource Waters.

5 And before we proceed with the hearing, I just
6 wanted to clarify the requirements for the Hearing
7 Officer reports and the schedule for deliberations.

8 Counsel Sanchez, do we need to do that on the
9 record of the hearing, or do we do it prior to the
10 hearing starting?

11 MR. SANCHEZ: Madam Chair, I think it would be
12 preferable for that to be on the record.

13 CHAIR STRINGER: Okay.

14 So with that, I will turn the floor over to
15 our Hearing Officer, which is Mr. Gregory Chakalian.

16 HEARING OFFICER CHAKALIAN: Good morning,
17 Commissioners, parties and members of the public.

18 On behalf of the Office of Public
19 Facilitation, I hereby call to order the petition to
20 designate the surface waters of the Upper Pecos
21 watershed as Outstanding National Resource Waters.

22 This petition was filed on October 1st, 2021,
23 by the Village of Pecos, San Miguel County, the Upper
24 Pecos Watershed Association, the New Mexico Acequia
25 Association and Molino de la Isla Organics LLC. To

1 order docketed as WQCC 21-51, rulemaking.

2 Ms. Arreguin, are you transcribing this
3 verbatim?

4 THE REPORTER: I am, yes.

5 HEARING OFFICER CHAKALIAN: And you'll be
6 swearing in the witnesses?

7 THE REPORTER: Yes.

8 HEARING OFFICER CHAKALIAN: All right.

9 My name is Gregory Chakalian, the appointed
10 Hearing Officer by Chair Stringer on November 30th,
11 2021, with the powers and duties outlined in 20.1.6.100
12 NMAC.

13 Hosting this WebEx event is Commission
14 administrator Pamela Jones.

15 This rulemaking was properly noticed in the
16 New Mexico Register and is otherwise required under
17 20.1.6.201 NMAC and is being held on a virtual WebEx
18 platform to increase public participation.

19 The public is encouraged to participate by
20 using the chat feature to alert the host, Ms. Jones,
21 that you want to provide general, which means
22 nontechnical, comments, or to cross-examine a witness.
23 General comment will be taken at 12:00 noon and
24 5:00 p.m. today, and each speaker will be limited to
25 five minutes. If the hearing continues on subsequent

1 days, those times will be the same.

2 This rulemaking is being transcribed verbatim
3 by a court reporter and recorded via WebEx. Please keep
4 your microphone muted until it is your turn to speak.

5 All of the documents referred to during
6 today's rulemaking can be found on the New Mexico
7 Environment web site under the Public Participation
8 menu.

9 The following background is in the
10 petitioners' words: As communities that depend upon the
11 Upper Pecos watershed know so well, agua es vida. The
12 waters of this watershed sustain and enrich the lives
13 and livelihoods of all who live, work and recreate
14 there. For centuries the Upper Pecos watershed has
15 supported robust communities.

16 As a footnote -- as a footnote the term "Upper
17 Pecos watershed" refers to the perennial and
18 nonperennial streams and wetlands nominated in this
19 petition and identified in Maps 1 and 2 and Tables 1 and
20 2 in Section II.B of the petition.

21 For generations the Upper Pecos watershed
22 supported the Pecos Pueblo peoples and to this day
23 remains culturally significant to their descendants.
24 The Upper Pecos watershed supports a rich tradition of
25 farming, ranching, acequias and other traditional uses,

1 all of which depend on clean water. Thanks in large
2 measure to a long history of respect and stewardship
3 among those who call the area home, most of the waters
4 of the Upper Pecos watershed remain clean and healthy
5 today.

6 These waters are not only among New Mexico's
7 most outstanding resources for people, but for animals
8 and plants as well. These waters feed exceptional
9 ecosystems that support an astounding diversity of
10 animals and plants, including New Mexico's State fish,
11 the Rio Grande cutthroat trout.

12 One of the most effective ways to deliver on
13 the promise of clean water for present and future
14 generations is to protect our most ecologically and
15 recreationally significant waters pursuant to the
16 Commission's regulations.

17 Accordingly, petitioners nominate all
18 perennial and nonperennial streams and wetlands shown in
19 Map 1, streams, and Map 2, wetlands, and listed in Table
20 1, streams, and Table 2, wetlands. These waters
21 encompass the mainstem of the Pecos River from the
22 boundary of the Pecos Wilderness downstream to the US
23 Forest Service Dalton fishing site/picnic site, 15 named
24 tributaries from their confluence with the Pecos River
25 upstream to the headwaters or to the Pecos Wilderness

1 boundary, whichever comes first, 96 identified
2 nonperennial waters that are tributaries to one of the
3 16 named waters and 16 identified wetlands.

4 Now, according to the rules, under 20.1.6
5 NMAC, the Commission may choose to deliberate
6 immediately following the conclusion of the public
7 hearing or at a subsequent meeting, but shall reach a
8 decision no later than 60 days following the close of
9 the record or the date of the Hearing Officer's report,
10 if requested, whichever is later. That is found at
11 20.1.6.306 subsection C NMAC.

12 The following parties have prefiled full
13 written technical testimony and marked exhibits in this
14 case: The New Mexico Environment Department's Surface
15 Water Quality Bureau of the Water Protection Division
16 and the petitioners listed above and Mr. Dennis
17 McQuillan.

18 As a preliminary matter, let's hear from the
19 parties regarding exhibits and stipulations.

20 So let's start with the petitioners.

21 How many exhibits are you seeking to introduce
22 into evidence?

23 MS. NOKES: Good morning, Mr. Hearing Officer,
24 and good morning, Madam Chair and the Commissioners.

25 This is Kelly Nokes on behalf of petitioners.

1 We at the -- at the outset, you know, we'd
2 like to note that we did contact Mr. Verheul and
3 Mr. McQuillan, the other parties, and they have
4 stipulated to the admission of all exhibits in this
5 matter, and we put forward 27 exhibits in our notice of
6 intent to file direct testimony.

7 HEARING OFFICER CHAKALIAN: Okay.

8 So are there any objections?

9 I know, Ms. Nokes, you just said that you've
10 contacted them.

11 But on the record, are there any objections to
12 the petitioners' 27 exhibits at this time?

13 MR. VERHEUL: Good morning, Mr. Hearing
14 Officer.

15 John Verheul representing New Mexico
16 Environment Department Surface Water Quality Bureau.

17 We have no objection to admission of any of
18 petitioners' exhibits.

19 HEARING OFFICER CHAKALIAN: And do we have
20 Mr. McQuillan?

21 MR. MC QUILLAN: Yes, Mr. Hearing Officer.

22 I have no objection to the exhibits.

23 HEARING OFFICER CHAKALIAN: Exhibit --
24 Petitioners' Exhibits 1 through 27 are hereby admitted
25 into evidence.

1 (Exhibits Petitioners' 1 through 27 admitted
2 into evidence.)

3 HEARING OFFICER CHAKALIAN: And, Ms. Arreguin,
4 will you keep track of the exhibits?

5 THE REPORTER: Yes.

6 HEARING OFFICER CHAKALIAN: Okay.

7 And have you received any of the exhibits yet?

8 THE REPORTER: I have not, but I find them on
9 the web site.

10 HEARING OFFICER CHAKALIAN: Okay. All right.

11 Ms. Nokes, have you checked the web site to
12 make sure that all 27 exhibits are on our web site and
13 that they're correct?

14 MS. NOKES: Yes, Mr. Hearing Officer.

15 HEARING OFFICER CHAKALIAN: Okay.

16 Okay, Ms. Arreguin. That's a good source.

17 Now let's go to the Environment's exhibits.

18 Mr. Verheul, how many exhibits do you seek to
19 introduce?

20 MR. VERHEUL: Thirty-eight, Mr. Hearing
21 Officer.

22 HEARING OFFICER CHAKALIAN: Okay.

23 And, Ms. Nokes and Mr. McQuillan, are there
24 any objections to the 38 exhibits from the Environment
25 Department?

1 MS. NOKES: No objections from petitioners,
2 Mr. Hearing Officer.

3 MR. MC QUILLAN: No objection, Mr. Hearing
4 Officer.

5 HEARING OFFICER CHAKALIAN: So, Ms. Arreguin,
6 New Mexico Environment Department's Exhibits 1 through
7 38 are admitted into evidence.

8 (Exhibits NMED 1 through 38 admitted into
9 evidence.)

10 HEARING OFFICER CHAKALIAN: And, Mr. Verheul,
11 do you know if all 38 are correctly identified on the
12 web site?

13 MR. VERHEUL: I do not, Mr. Hearing Officer,
14 but I will double-check that shortly.

15 HEARING OFFICER CHAKALIAN: Thank you.
16 Appreciate it.

17 Once you find out that they are, will you send
18 a message to Ms. Jones, and she will let me know?

19 MR. VERHEUL: I will do so.

20 HEARING OFFICER CHAKALIAN: Wonderful.

21 It's my -- Mr. McQuillan, do you have any
22 exhibits?

23 MR. MC QUILLAN: Yes, Mr. Hearing Officer. I
24 have two exhibits, and they are both posted on the
25 Department's web site for the petition in this matter.

1 HEARING OFFICER CHAKALIAN: Okay.

2 And, Ms. Nokes and Mr. Verheul, are there any
3 objections to Mr. McQuillan's two exhibits?

4 MS. NOKES: No objections on behalf of
5 petitioners, Mr. Hearing Officer.

6 MR. VERHEUL: No objections from the
7 Department.

8 HEARING OFFICER CHAKALIAN: Okay.

9 Then I'm going to admit Exhibits 1 and 2 from
10 Mr. McQuillan into evidence.

11 (Exhibits McQuillan 1 and 2 admitted into
12 evidence.)

13 HEARING OFFICER CHAKALIAN: And they are
14 posted so, Mr. McQuillan, you don't have to get back to
15 me on that.

16 Okay. It's my understanding that the reason
17 there is no rebuttal evidence submitted in this case is
18 because all of the witnesses that will be called today
19 are in favor of the petition.

20 Is that correct, Ms. Nokes?

21 MS. NOKES: That is correct on behalf of
22 petitioners, Mr. Hearing Officer.

23 HEARING OFFICER CHAKALIAN: And Mr. Verheul?

24 MR. VERHEUL: That is correct on behalf of the
25 Environment Department.

1 HEARING OFFICER CHAKALIAN: Mr. McQuillan?

2 MR. MC QUILLAN: Yes, Mr. Hearing Officer,
3 that's correct.

4 HEARING OFFICER CHAKALIAN: Okay. All right.
5 Well, we dealt with that preliminary matter.
6 Let's continue.

7 Now that the exhibits are admitted into
8 evidence, they may be used in findings of fact and
9 conclusions of law. Any other exhibit not on this list
10 must be entered during the hearing. The party offering
11 such an exhibit into evidence has the burden of
12 establishing a foundation and its authenticity through a
13 witness.

14 As the parties have already prefiled full
15 written technical testimony and have decided not to
16 submit rebuttal testimony, each witness has up to 30
17 minutes in which to adopt their prefiled testimony under
18 oath, making any corrections on the record, and provide
19 a concise, plain English summary for the benefit of the
20 public.

21 This time limitation was agreed to by the
22 parties and set out in a procedural order dated
23 December 9, 2021. Ms. Jones will keep track and provide
24 each witness with an alert five minutes before the time
25 limit has been reached.

1 All testimony will be taken under oath. All
2 persons giving testimony will be subject to
3 cross-examination by any other person in attendance on
4 the subject matter of their testimony and on matters
5 affecting their credibility under 20.1.6.301 NMAC. All
6 relevant evidence shall be admitted unless I determine
7 that the evidence is unduly repetitious or incompetent.

8 The court reporter will swear in the
9 witnesses.

10 Now, do we have all the witnesses in
11 attendance at this time?

12 MS. NOKES: Mr. Hearing Officer, this is Kelly
13 Nokes again on behalf of petitioners.

14 Unfortunately, one of petitioners' witnesses,
15 Mr. Ralph Vigil, is in the hospital this morning and
16 therefore unable to testify today. We have contacted
17 the other parties, and NMED does not object to the
18 admission of Mr. Vigil's prefiled written testimony,
19 waiving their right to cross-examination, and we would
20 like to ask the same of Mr. McQuillan, as well.

21 MR. MC QUILLAN: I agree.

22 HEARING OFFICER CHAKALIAN: Okay.

23 Mr. McQuillan --

24 MS. NOKES: Thank you.

25 HEARING OFFICER CHAKALIAN: Mr. McQuillan, the

1 parties don't speak to each other through this platform.
2 Everything is addressed to me, and then I'll ask you for
3 your position. Okay?

4 MR. MC QUILLAN: Yes, sir. Apologize.

5 HEARING OFFICER CHAKALIAN: Thank you.

6 MR. MC QUILLAN: Thank you.

7 HEARING OFFICER CHAKALIAN: No. No problem.

8 So do the parties have an objection to
9 swearing in all the witnesses at one time?

10 MS. NOKES: Mr. Hearing Officer, if I could
11 excuse one more -- one more time.

12 Our two additional experts are not available
13 this morning. We have petitioners' expert Ms. Paula
14 Garcia and Dr. David Propst who had scheduling conflicts
15 for this morning. So we would like to respectfully
16 request that they be permitted to testify potentially
17 out of order this afternoon if it's necessary.

18 HEARING OFFICER CHAKALIAN: Of course, of
19 course. The way I see the rule, since we don't have any
20 adverse witnesses, it's not quite as critical to have a
21 particular order.

22 I will ask your witnesses to go first, and
23 then the Department's witnesses will go after that, and
24 then Mr. McQuillan can testify -- testify, and his
25 witnesses can go after that. And then we will call

1 witness Garcia and Propst when they are available. So
2 that's not a problem.

3 But how many witnesses, Ms. Nokes, do you have
4 present right now?

5 MS. NOKES: Mr. Hearing Officer, we are just
6 missing those three out of the original ten. So we have
7 seven witnesses present currently.

8 HEARING OFFICER CHAKALIAN: You have seven.

9 Would those seven witnesses turn on their
10 cameras.

11 And, Ms. Nokes, will you let me know when you
12 see all seven of them.

13 MS. NOKES: Yes, Mr. Hearing Officer.

14 THE REPORTER: And, Ms. Nokes, could you say
15 all the seven names for me, please.

16 MS. NOKES: Of course. Of course.

17 We have -- I show an order of them appearing
18 on my screen. We have the Honorable Second Lieutenant
19 Governor Vince Toya on behalf of the Jemez Pueblo. We
20 have Mr. Frank "Pancho" Adelo. We have Ms. Janice
21 Varela. We have Ms. Lela McFerrin. Ms. Rachel Conn.
22 Mr. Telesfor A. Benavidez, Mayor of Village of Pecos.
23 And Ms. Toner Mitchell. And I believe that's all.

24 And I would also like to introduce my
25 co-counsel, Ms. Tannis Fox here, as well.

1 HEARING OFFICER CHAKALIAN: Welcome, Ms. Fox.

2 THE REPORTER: And, Judge, before we do this,
3 may I take a moment to deal with a technical issue.
4 Shouldn't take too long.

5 (Proceedings in brief recess.)

6 THE REPORTER: Thank you so much.

7 HEARING OFFICER CHAKALIAN: Ms. Arreguin, I've
8 been notified by the administrator that all of NMED's 38
9 exhibits are correctly listed on the web site.

10 THE REPORTER: Thank you.

11 HEARING OFFICER CHAKALIAN: All right.

12 NMED, are all of your witnesses present?

13 MR. VERHEUL: I believe they are, Mr. Hearing
14 Officer.

15 Would you like them to turn on their video?

16 HEARING OFFICER CHAKALIAN: Please.

17 And would you list their names for the court
18 reporter.

19 MR. VERHEUL: Indeed. We have Ms. Jennifer
20 Fullam, F-U-L-L-A-M, and Ms. Diana Aranda, A-R-A-N-D-A.

21 HEARING OFFICER CHAKALIAN: Okay.

22 And, Mr. McQuillan, are you going to testify?

23 MR. MC QUILLAN: Yes, Mr. Hearing Officer. I
24 am my only witness.

25 HEARING OFFICER CHAKALIAN: You're your only

1 witness. Okay.

2 So, Ms. Arreguin, you have all of the
3 witnesses except for three that were listed in the NOIs,
4 two of which that will testify this afternoon and won't
5 be sworn in at this time, but would you swear in all the
6 other witnesses.

7 THE REPORTER: Yes.

8 (Vincent E. Toya, Frank "Pancho" Adelo, Janice
9 Varela, Lela McFerrin, Rachel Conn, Telesfor
10 A. Benavidez, Toner Mitchell, Jennifer Fullam,
11 Diana Aranda and Dennis McQuillan were duly
12 sworn or affirmed.)

13 HEARING OFFICER CHAKALIAN: Ms. Arreguin,
14 would you swear in Mr. Velasquez again. I didn't see
15 him raise his right hand.

16 COMMISSIONER VELASQUEZ: Am I a witness?

17 CHAIR STRINGER: He's a Commissioner.

18 HEARING OFFICER CHAKALIAN: Ah. Your camera
19 was on so I thought you were a witness. Excuse me.

20 Okay. Let's proceed then.

21 We will address posthearing procedures after
22 the evidentiary record is closed.

23 I will conduct the hearing so as to provide a
24 reasonable opportunity for all persons to be heard
25 without making the hearing unreasonably lengthy or

1 cumbersome. The Rules of Civil Procedure and the Rules
2 of Evidence do not apply, but I will make whatever
3 orders are necessary to preserve decorum and to protect
4 the orderly hearing process.

5 All right. Are there any other preliminary
6 matters to address before we take opening statements?

7 All right.

8 CHAIR STRINGER: Mr. Chakalian, is this the
9 appropriate time to address Hearing Officer's report or
10 when we're going to deliberate?

11 HEARING OFFICER CHAKALIAN: I -- Chair
12 Stringer, I -- I think you can address it at any time
13 you so choose, but I would think that after hearing the
14 testimony and seeing the evidence the -- the Commission
15 may make a decision at that time on how complex of a
16 case it is and the necessity of the report or choose to
17 deliberate. So we can do it at any time you like, but I
18 thought it would be at the end of the evidence -- when
19 the record is closed.

20 CHAIR STRINGER: Okay. That makes sense to
21 me. So we'll address it at that time.

22 HEARING OFFICER CHAKALIAN: Thank you.

23 So, petitioner, you're going to go first.

24 So, Ms. Nokes, are you making the opening
25 statement?

1 MS. NOKES: That's correct, Mr. Hearing
2 Officer.

3 HEARING OFFICER CHAKALIAN: All right. Let's
4 have a brief opening statement.

5 MS. NOKES: Thank you.

6 Well, good morning, Mr. Hearing Officer, Madam
7 Chair and Commissioners.

8 My name is Kelly Nokes, along with my
9 co-counsel, Tannis Fox. We are attorneys with the
10 Western Environmental Law Center.

11 And we are here today representing five
12 petitioners in this petition to designate the waters of
13 the Upper Pecos watershed as Outstanding National
14 Resource Waters, a petition that was filed with the
15 Commission on October 1st of 2021.

16 An Outstanding Waters designation protects New
17 Mexico's most exceptional waters and provides the
18 highest level of protection in the state by prohibiting
19 any new degradation to water quality while still
20 respecting and allowing the continuation of the
21 preexisting traditional land use activities such as
22 grazing and acequia operations.

23 This petition before you today reflects a
24 community-driven effort brought forward by a diverse
25 group of local governments and local and statewide

1 community and business organizations. The petitioners
2 include the Village of Pecos, San Miguel County, the
3 Upper Pecos Watershed Association, the New Mexico
4 Acequia Association and Molino de la Isla Organics LLC.

5 This petition nominates the Pecos River from
6 its northern wilderness boundary to its complements with
7 Dalton Canyon, 16 named tributaries to the Pecos and 96
8 unnamed tributaries to these 16 waters. All told, these
9 waters constitute almost 180 miles of streams.

10 Petitioners also nominate 16 wetlands consisting of
11 almost 43 acres.

12 The nominated waters are shown in Petitioners'
13 Exhibit 5.

14 The nominated waters of the Upper Pecos
15 watershed are truly exceptional and deserving a
16 designation as Outstanding Waters in accordance with the
17 state's regulations at 20.6.4.9 NMAC. As demonstrated
18 by petitioners' testimony and exhibits submitted in our
19 notice of intent to submit direct technical testimony on
20 March 10 and as will be summarized by our witnesses
21 today, all nominated waters meet a number of criteria
22 for designation.

23 Petitioners Exhibit 4 is a chart describing
24 each nominated water and which criteria that waterway
25 meets. In short, designation of all nominated waters is

1 beneficial to the State of New Mexico as required by
2 20.6.4.9B NMAC. All nominated waters meet both the
3 exceptional ecological and exceptional recreational
4 criteria of 20.6.4.9B.(2), and many waters meet other
5 criteria, as well. To be designated, the water body
6 must meet only one of the criteria in 20.6.4.9B.(1)
7 through (3).

8 The nominated waters support one of the most
9 ecologically diverse and significant areas of our state.
10 From its abundance of wildlife, including mammals like
11 the black bear and Rocky Mountain bighorn sheep,
12 amphibians and fish like the northern leopard frog and
13 Rio Grande cutthroat trout, and bird life like the
14 peregrine falcon, bald eagle and Mexican spotted owl.

15 The nominated area is also home to a rich and
16 diverse plant life and supports one federally endangered
17 and number of state-endangered and special status plant
18 species.

19 Additionally, the nominated waters represent
20 some of the most outstanding recreational areas in the
21 state. Annually thousands recreate at the seven US
22 Forest Service campgrounds in the nominated area, where
23 people from the local community, state and beyond come
24 to camp, hike, backpack, horseback ride, hunt, bird
25 watch, photograph, mountain bike and raft.

1 The waters of the upper Pecos are renowned for
2 trout fishing, and the riparian habitat surrounding the
3 nominated streams and wetlands supports numerous species
4 of economic and recreational importance as identified by
5 the New Mexico Department of Game and Fish.

6 The petitioners have worked very closely on
7 this nomination with the New Mexico Environment
8 Department over the past two years, and we sincerely
9 thank the Surface Water Quality Bureau staff for all
10 their work and assistance and for the Department's full
11 support of this nomination.

12 In addition, the New Mexico Department of Game
13 and Fish supports the nomination, and Director Sloane
14 recently submitted a letter of support into the record
15 on behalf of the Department. We very much appreciate
16 Game and Fish's support of this nomination, as well.

17 We are pleased to now present our case before
18 the Commission, and we will call nine witnesses today.

19 First, the Honorable Second Lieutenant
20 Governor Vincent Toya of the Jemez Pueblo. Second
21 Lieutenant Governor Toya will discuss the cultural
22 significance of protecting the nominated waters to the
23 Jemez and Pecos peoples, protection that is beneficial
24 to the state.

25 Second, Ms. Janice Varela, County Commissioner

1 for District 2 of petitioner San Miguel County, will
2 discuss the ecological and recreational exceptionality
3 of the waters and the economic importance of protecting
4 the waters to San Miguel County and the state.

5 Similarly, Mayor Telesfor Benavidez, Mayor of
6 petitioner Village of Pecos, will discuss the economic
7 importance of protecting the waters to the Village of
8 Pecos and their importance to that community.

9 Fourth, Mr. Frank, or Pancho, Adelo, the
10 President of petitioner Upper Pecos Watershed
11 Association, will discuss the abundance of recreational
12 activities in the nominated area, with particular focus
13 on the exceptional trout fishing in the Pecos and its
14 tributaries, which saw over 158,000 angler days during
15 the 2021 license year. He will also discuss the
16 importance to local farmers and ranchers who depend on
17 these waters for their livelihood of keeping the
18 watershed clean.

19 Fifth, Ms. Lela McFerrin, the Vice-President
20 of Upper Pecos Watershed Association, will discuss the
21 extensive community outreach conducted throughout the
22 nomination proceedings and will highlight the broad
23 local, statewide and national support for this
24 nomination, as shown in Petitioners' Exhibit 16, which
25 is a compilation of letters of support. Since we filed

1 our NOI over 1,600 other individuals and organizations
2 have written in support of the petition. This is a
3 nomination with wide-ranging support, and no party has
4 filed an opposition.

5 Sixth, petitioners will call Ms. Rachel Conn,
6 the Deputy Director of Amigos Bravos, a statewide water
7 conservation organization. Ms. Conn will provide an
8 overview how petitioners have met all procedural and
9 public notice requirements for the designation. She
10 will also explain how each of the nominated waters meets
11 more than one of the designation criteria in
12 Section 20.6.4.9 NMAC.

13 Seventh, Mr. Toner Mitchell, the New Mexico
14 Water and Habitat Program Director for Trout Unlimited,
15 will discuss the exceptional recreational and ecological
16 significance of the nominated waters and how the
17 nomination will serve to benefit the state overall.

18 Eighth, Ms. Paula Garcia, the Executive
19 Director of petitioner New Mexico Acequia Association,
20 will discuss the acequia association's support for the
21 nomination, explaining the significance of Outstanding
22 Waters protections to the state's traditional acequia
23 users and how this benefits the state.

24 Finally, petitioners will call Dr. David
25 Propst. Dr. Propst is a national expert and an adjunct

1 research professor at the University of New Mexico. He
2 is a former employee of the New Mexico Department of
3 Game and Fish, where he worked as a project leader in
4 the native fish section of the Department for nearly 27
5 years. Dr. Propst will discuss how all nominated waters
6 meet the exceptional ecological significance criterion
7 of Section 20.6.4.9B.(2) NMAC and in particular how the
8 nonperennial waters included in the nomination are
9 essential to the ecological health, integrity and
10 significance of the Upper Pecos watershed as a whole.

11 Unfortunately, Mr. Ralph Vigil, owner of
12 petitioner Molino de la Isla Organics, is unable to join
13 us to testify today because he is in the hospital.
14 Mr. Vigil's farm relies on the water from the Acequia
15 del Molino, which draws water from the Pecos River
16 immediately downstream from the nominated main stretch.
17 Mr. Vigil is also chair of the New Mexico Acequia
18 Commission. He understands as a parciante and state
19 leader the importance of maintaining the overall health
20 of the watershed to the more than 55 downstream acequias
21 that feed directly or indirectly from the Pecos River.

22 Mr. Vigil's prefiled written testimony has
23 been admitted with our NOI, and the parties have agreed
24 to waive their rights to cross-examination of Mr. Vigil
25 under the circumstances.

1 With that, on behalf of petitioners, we thank
2 you, Mr. Hearing Officer, Madam Chair and Commission
3 Members, for giving us this opportunity to bring this
4 diverse set of experts and community members before you
5 today to provide evidence in support of the petition to
6 nominate the waters of the Upper Pecos watershed as
7 Outstanding National Resource Waters, and we thank you
8 for your consideration of this important nomination.

9 HEARING OFFICER CHAKALIAN: Ms. Nokes, would
10 you call your first witness.

11 MS. NOKES: Yes, Mr. Hearing Officer.

12 Petitioners would first like to call Vincent
13 Toya as a witness.

14 VINCENT E. TOYA

15 having been first duly sworn or affirmed, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. NOKES:

19 Q. Would you please state your name for the
20 record, Mr. Toya.

21 A. Hi. Good morning, everyone.

22 I'm Second Lieutenant Vincent E. Toya.

23 Q. Thank you.

24 Mr. Toya, do you hold an elected position, and
25 what is that if so?

1 A. Yes, I do. I serve as the Second Lieutenant
2 Governor for the Pueblo of Jemez.

3 Q. Second Lieutenant Governor Toya, would you
4 please describe your relevant experience as a witness in
5 this matter?

6 A. Yes. I'd love to.

7 The Pueblo of Jemez has spiritual and cultural
8 connections to the Pecos area as our Pecos ancestors
9 lived in this area since 1200. In 1838 the Pecos
10 Pueblo -- Pecos people migrated to Jemez Pueblo, and
11 with this migration the Pecos Pueblo was merged with
12 Jemez Pueblo by an act of Congress in the 1930s. Along
13 with the migration, the Pecos people brought their
14 Governor cane, at which time Jemez Pueblo placed this
15 cane with our secular leadership, instilling the Second
16 Lieutenant Governor of Jemez Pueblo.

17 Consequently, I am speaking here today on
18 behalf of our Jemez and Pecos peoples to communicate our
19 support for the protection of the Upper Pecos watershed
20 as an Outstanding National Resource Waters. Pecos
21 Pueblo, which translates to the place above the water,
22 is an ancestral pueblo for Pecos descendants who
23 currently live at the Pueblo of Jemez.

24 The pueblo feels strongly about the need for
25 protecting this pristine water source. This stretch of

1 the Pecos River is the lifeblood of our people, and the
2 ecosystems that are connected to this special place on
3 our Pecos ancestral homeland is too precious not to
4 conserve for future generations.

5 Q. Thank you.

6 Second Lieutenant Governor Toya, you prepared
7 testimony for this proceeding which is Exhibit 18; is
8 that correct?

9 A. Yes, I did.

10 Q. Is your testimony accurate to the best of your
11 knowledge?

12 A. Yes.

13 MS. NOKES: Second Lieutenant Governor Toya
14 would now like to present his testimony before the
15 Commission.

16 Second Lieutenant Governor Toya, please
17 proceed with your presentation.

18 MR. TOYA: Thank you, Mr. Hearing Officer,
19 Madam Chair and Commissioners, for providing me with
20 this opportunity to speak with you today.

21 Our Pecos ancestors call the Pecos river
22 Toqgk'o P'oeoegee, which can be interpreted as Corn Cob
23 River, because its waters sustain the people and the
24 corn that was planted by them up and down the Pecos
25 River valley, or as we call it Toqgk'o P'oqoqwaamu, Corn

1 Cob River valley.

2 Today the descendants of the Pecos continue to
3 visit the sacred shrines on the Pecos ancestral
4 homeland, including the Upper Pecos watershed and
5 perform ceremonies using the sacred waters of the Pecos
6 River. We as Jemez people see the sacredness of the
7 water ecosystems that sustain life to all the birds and
8 animals, plants and aquatic life that humans greatly
9 benefit from.

10 The waterways are our trailways and are part
11 of our migratory stories. Clean water and the
12 connectedness of water, land and people is critical and
13 vital for our health and well-being. To ensure the
14 well-being of future generations of peoples that connect
15 themselves to the Pecos River, Jemez Pueblo and the
16 descendants of Pecos Pueblo enthusiastically support
17 designating the Upper Pecos watershed as an Outstanding
18 National Resource Water.

19 In closing, please accept the Pueblo of Jemez
20 and the descendants of Pecos Pueblo's full support for
21 this petition. May your efforts and the efforts of your
22 colleagues be blessed by our creator, and may your lives
23 be enriched with love and peace.

24 MS. NOKES: Thank you, Second Lieutenant
25 Governor Toya.

1 That concludes Second Lieutenant Governor
2 Toya's direct testimony, and he will now stand for
3 cross-examination from the parties and questions from
4 the Commission.

5 HEARING OFFICER CHAKALIAN: Do any of the
6 parties have any cross-examination for this witness?

7 MR. VERHEUL: Mr. Hearing Officer, the
8 Department has no cross-examination questions, but does
9 thank Second Lieutenant Governor Toya for his
10 participation and testimony.

11 HEARING OFFICER CHAKALIAN: Mr. McQuillan?

12 MR. MC QUILLAN: Mr. Hearing Officer, I have
13 no cross-examination for Lieutenant -- Second Lieutenant
14 Governor's excellent testimony. Thank you.

15 HEARING OFFICER CHAKALIAN: Okay.
16 Mr. McQuillan, if you're going to address the
17 Commission, please turn on your camera when you do in
18 the future.

19 MR. MC QUILLAN: Yes, sir.

20 HEARING OFFICER CHAKALIAN: Are there any
21 Members of the Commission that have questions for
22 Mr. Toya?

23 Are there any members of the public that have
24 cross -- ah.

25 Ms. Stringer?

1 Are there --

2 CHAIR STRINGER: No.

3 HEARING OFFICER CHAKALIAN: -- any members of
4 the --

5 CHAIR STRINGER: I don't have any questions.

6 HEARING OFFICER CHAKALIAN: Thank you, Chair
7 Stringer.

8 Are there any members of the public who have
9 cross-examination questions for this witness?

10 Ms. Nokes, may this witness be excused?

11 MS. NOKES: Yes, Mr. Hearing Officer.

12 HEARING OFFICER CHAKALIAN: Would you call
13 your second witness.

14 MS. NOKES: Gladly.

15 Petitioners will now call Ms. Janice Varela as
16 a witness.

17 MS. VARELA: Good morning, everyone.

18 Thank you for this opportunity.

19 HEARING OFFICER CHAKALIAN: Please proceed.
20
21
22
23
24
25

1 JANICE VARELA

2 having been first duly sworn or affirmed, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. NOKES:

6 Q. Please go ahead and state your name for the
7 record, Ms. Varela.

8 A. Janice Varela.

9 Q. Ms. Varela, do you hold an elected position,
10 and what is that if so?

11 A. Yes. I am the San Miguel County Commissioner
12 representing District 2. I currently serve as
13 Vice-Chair of the San Miguel County Commission. This is
14 my second year and my second term.

15 Q. Commissioner Varela, will you please describe
16 your relevant experience as a witness in this matter?

17 A. Yes, gladly. I'm a lifelong resident of
18 Pecos, New Mexico. The people of my district elected me
19 because of my history and commitment to protecting land
20 and water, the Pecos River and the Upper Pecos
21 watershed. I work tirelessly with my community in
22 taking action to protect water, including water rights.

23 My hope is to improve our local economies by
24 promoting our natural resources and recreational
25 opportunities. By enacting protection of water quality

1 by designating the Upper Pecos watershed as an
2 Outstanding National Resource Water or Outstanding
3 Water, it will ensure that we have a sustainable future
4 so that our river can thrive.

5 As a planning and zoning commissioner prior, I
6 have advocated for protection of land use, waste
7 management and planning.

8 Q. Thank you, Ms. Varela.

9 Is Petitioners' Exhibit 26 an accurate copy of
10 your resume?

11 A. Yes.

12 Q. And, Commissioner Varela, you prepared
13 testimony for this proceeding which is Exhibit 25; is
14 that correct?

15 A. (Unintelligible and/or inaudible).

16 Q. And is your testimony accurate to the best of
17 your knowledge?

18 A. (Unintelligible and/or inaudible).

19 Q. Ms. Varela, we're actually having a hard time
20 hearing you all of a sudden.

21 A. (Unintelligible and/or inaudible).

22 HEARING OFFICER CHAKALIAN: She's muted.

23 MS. NOKES: Did we accidentally mute?

24 MS. VARELA: I accidentally muted.

25 HEARING OFFICER CHAKALIAN: Ms. Nokes --

1 MS. NOKES: No worries.

2 HEARING OFFICER CHAKALIAN: Ms. Varela, one
3 moment.

4 Ms. Nokes, as a matter of record, it just
5 occurred to me that even though you asked Mr. Toya, and
6 while he's still with us, whether he had any
7 corrections, I don't remember your asking if he adopted
8 his written testimony under oath.

9 Do you want to do that at this time?

10 MS. NOKES: Sure. Thank you, Mr. Hearing
11 Officer.

12 Second Lieutenant Governor Toya, do we still
13 have you with us?

14 MR. TOYA: Yes. I'm still here.

15 MS. NOKES: Would you please confirm that you
16 would like to adopt your testimony under oath?

17 MR. TOYA: Yes. I will like to.

18 HEARING OFFICER CHAKALIAN: Thank you.

19 MS. NOKES: Thank you.

20 MR. TOYA: You're welcome.

21 Q. (BY MS. NOKES) Ms. Varela, turning back to
22 you, I'm going to go back to where we thought we lost
23 you, muted there.

24 So is Petitioners' Exhibit 26 an accurate copy
25 of your resume?

1 A. Yes.

2 Q. And, Commissioner Varela, you prepared
3 testimony for this proceeding which is Exhibit 25; is
4 that correct?

5 A. Yes.

6 Q. And is your testimony accurate to the best of
7 your knowledge?

8 A. Yes.

9 Q. And would you like to confirm that you would
10 like to adopt your testimony under oath here today?

11 A. Yes.

12 Q. Thank you.

13 Commissioner Varela would like to present her
14 testimony before the Commission.

15 And, Commissioner Varela, please go ahead and
16 proceed.

17 MS. VARELA: Thank you.

18 Thank you, Mr. Hearing Officer, Madam Chair
19 and Commissioners, for providing me with this
20 opportunity to speak with you today.

21 San Miguel County, New Mexico was founded in
22 1852, named for San Miguel del Vado, and is comprised of
23 a total land mass of 4,736 square miles --

24 I hit the mute button again. I apologize.

25 I'll hold my papers away from that keyboard. I

1 apologize.

2 -- of which 4,716 square miles is land and
3 20 square miles is water. The Pecos River has its
4 origins in the Pecos high country, and the Gallinas
5 River is a main tributary. Both rivers support life
6 throughout this high desert county.

7 These rivers and surrounding watershed provide
8 water for agriculture, farming and ranching, which has
9 been a mainstay industry in the county since its
10 inception. According to the US Census, the population
11 of the county was estimated to be 27,277 in July
12 of 2019. Nearly 80 percent of residents of San Miguel
13 County identify as Hispanic. The median household
14 income in 2019 was \$30,946, with about 24 percent of our
15 residents living in poverty.

16 Many of our residents have been in Pecos and
17 San Miguel County for their entire lives and for many
18 generations. Pecos is more than a pretty place. It is
19 our home. And unlike many people that I have
20 encountered who have worked and moved from coast to
21 coast, we cannot imagine living anywhere else.
22 Neighbors take care of each other, and many families
23 still live together in extended households.

24 Natural resources and their protection are
25 critical for our people and wildlife and are essential

1 for continuation of farming and ranching practices.
2 National protected areas in our county include the Las
3 Vegas National Wildlife Refuge, Pecos National
4 Historical Park and the Santa Fe National Forest. Our
5 National Forest lands offer a plethora of opportunity to
6 many recreationists, hunters, anglers and hikers.

7 We are home to the Pecos Wilderness and a Wild
8 and Scenic section of the Pecos River. Our region
9 provides for over 100 miles of high-quality cold-water
10 fishing. Holy Ghost Canyon in the Pecos is the only
11 place on planet earth where the endangered flower Holy
12 Ghost ipomopsis grows. We are home to the federally
13 protected Mexican spotted owl and native Rio Grande
14 cutthroat trout.

15 The Pecos River and Upper Pecos watershed as a
16 whole holds special significance to the natives who have
17 lived in Pecos all of their lives. Many residents rely
18 on wildlife and fish to feed their families and proudly
19 pass these hunting and fishing traditions on to the next
20 generation. Culinary treasures abound in our forest, as
21 well. We gather herbs and medicine to heal ourselves.
22 Pinon gathering and gathering of wild foods are still
23 practiced and very important to our people and cultural
24 survival.

25 Without water we cannot live. The saying goes

1 el agua es vida, water is life. No person or species
2 can live without it. Our pueblo ancestors moved here
3 from places such as Chaco and Mesa Verde and other sites
4 no longer suited to sustain life without water.

5 In November, 2019 I presented a resolution for
6 adoption by the San Miguel County Commission stating our
7 support for obtaining Outstanding Waters designation for
8 our local river and its tributaries, the Upper Pecos
9 watershed. The resolution passed unanimously, without
10 controversy. My fellow Commissioners also recognize the
11 importance of water and ensuring this vital local
12 resource is duly protected.

13 Designation of the waters of the Upper Pecos
14 watershed as an Outstanding Water will benefit our
15 community by protecting the precious high-quality water
16 resources that are so important for recreational,
17 agricultural and economic activities for residents and
18 visitors alike. Our local -- our local economy is
19 dependent on the health of our river, and Outstanding
20 Waters protections will help our local economy and
21 communities to thrive both now and into the future.

22 Growing up in the Pecos was a gift that has
23 shaped who I am as a person and who I am as a community
24 leader. My gift was being able to enjoy nature,
25 swimming, fishing, camping and gathering herbs and

1 berries with my family. My wish is that this continues.
2 My new role as a grandmother is to share these gifts
3 with my grandchildren and teach them the lessons that I
4 have learned in the woods. My father and his father
5 were well known fly anglers and considered the best in
6 the village. My father's last words on his deathbed
7 were "Teach the boy to fish."

8 I support the designation of the waters of the
9 Upper Pecos watershed as Outstanding National Resource
10 Waters and respectfully request that the Water Quality
11 Control Commission grant petitioners' request to
12 designate the Upper Pecos watershed as Outstanding
13 Waters.

14 MS. NOKES: Thank you, Commissioner Varela.

15 That concludes Commissioner Varela's direct
16 testimony, and she will now stand for cross-examination
17 from the parties and questions from the Commission.

18 HEARING OFFICER CHAKALIAN: Do either of the
19 parties have any cross-examination for this witness?

20 MR. VERHEUL: Mr. Hearing Officer, the
21 Environment Department has no cross-examination
22 questions, but thanks Commissioner Varela for her
23 participation and testimony.

24 MS. VARELA: You're welcome. Thank you.

25 MR. MC QUILLAN: Mr. Hearing Officer, I have

1 no questions. Thank you.

2 HEARING OFFICER CHAKALIAN: Thank you.

3 Do any of the Commissioners have
4 cross-examination for this witness?

5 Do any of the public members with us have
6 cross-examination for this witness?

7 Ms. Nokes, may this witness be excused?

8 MS. NOKES: Yes, Mr. Hearing Officer.

9 HEARING OFFICER CHAKALIAN: Okay.

10 And I would like to make a comment at this
11 time. From my experience with this Commission, this
12 public body, I can say that everyone here is well
13 prepared. I would bet that the Commissioners have read
14 the evidence, the prefiled testimony provided by each
15 witness.

16 And I suggest that the summary that each
17 witness is going to give today, instead of reading what
18 is already in the record as evidence, that time be used
19 to add to or to give context to or to translate
20 technical terms into plain English for public members,
21 and that is my suggestion to the parties.

22 So, Ms. Nokes, would you like to call your
23 third witness?

24 MS. NOKES: Thank you, Mr. Hearing Officer.

25 Petitioners will now call Mr. Telesfor

1 Benavidez.

2 TELESFOR A. BENAVIDEZ

3 having been first duly sworn or affirmed, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. NOKES:

7 Q. Mr. Benavidez, will you state your name for
8 the record?

9 A. Good morning, everyone.

10 My name is Telesfor Benavidez. I go by Ted.

11 Q. Thank you.

12 Mr. Benavidez, do you hold an elected
13 position, and what is that if so?

14 A. I do. I was elected recently into my second
15 term as the Village of Mayor of Pecos. I have been the
16 Mayor since March 6th, 2018.

17 Q. Great. Thank you.

18 Mayor Benavidez, please describe your relevant
19 experience as a witness in this matter.

20 A. I was born in Santa Fe, New Mexico, and raised
21 in Pecos. My family bought a house in Pecos in 1960,
22 which is right in front of the Pecos River. I
23 graduated. My -- I went to Highlands for my freshman
24 year. Then I joined the Marine Corps. Then I came back
25 home.

1 As the Mayor, I make sure that the village has
2 water, sewer, fire department and ambulance service.
3 I've established protocol and opened direct lines of
4 communication between the village and higher echelons of
5 law enforcement to address citizen complaints and ensure
6 a safer, more perceived illegal drug culture in the
7 community. I work with teachers and kids from Pecos
8 Independent School recently. I worked with Dr. Bennett
9 who opened a medical center in the village that will
10 provide free-of-charge care to the community.

11 Q. Thank you, Mayor Benavidez.

12 You prepared testimony for this proceeding
13 which is Exhibit 27; is that correct?

14 A. Yes.

15 Q. And is your testimony accurate to the best of
16 your knowledge?

17 A. Yes, it is.

18 Q. And would you like to confirm that you will
19 adopt your testimony under oath here today?

20 A. Yes. I do.

21 MS. NOKES: Mr. Benavidez would now like to
22 present his testimony before the Commission.

23 So please proceed with your presentation.

24 MR. BENAVIDEZ: This week we started cleaning
25 the ditches, which is very important. We started

1 cleaning the acequias to open our ditches.

2 The waters of the Pecos are among New Mexico's
3 most treasured assets. Our river is what brings people
4 to our town to visit, which helps the economy of the
5 village. I believe that the river has one of the
6 freshest waters in the State of New Mexico. Ensuring
7 that the water of the Pecos are protected for the
8 benefits of current future residents and visitors of
9 Pecos village is vital to the health of our community.

10 There is not a summer that I do not visit the
11 river. I take my nieces and nephews to pick rocks on
12 the river, mostly heart-shaped rocks. That's what my
13 granddaughter likes. I know that the community members
14 do the same. They go to the river for peace and quiet.
15 Our kids swim in the river.

16 Without local tax increases to our community
17 and a minimum amount of debt, our current Pecos Village
18 administration has reached significant milestones to
19 improve the quality of life of the citizens and provide
20 a safer, healthy and per -- pro -- I'm sorry --
21 prosperous -- I have such a hard word -- community. We
22 care about the river and the surrounding watershed so
23 much that we constructed a \$6.5 million watershed
24 treatment plant.

25 The Village of Pecos encourages the New Mexico

1 Water Quality Commission to grant petitioners' request
2 to designate the waters of the Pecos watershed as an
3 Outstanding National Water Resource. Our river is one
4 of the best water resources we can get, and it is the
5 lie -- likelihood of our community. It fuels our
6 economy. It is a place for us to go tubing, swimming,
7 fishing year round.

8 The river is precious and needs to be
9 protected so that our future generations and my nephew
10 and my niece can use it also.

11 Thank you.

12 MS. NOKES: Thank you, Mayor Benavidez.

13 That concludes Mayor Benavidez' direct
14 testimony, and he will now stand for cross-examination
15 from the parties and questions from the Commission.

16 HEARING OFFICER CHAKALIAN: Are there any
17 parties that wish to cross-examine Mr. Benavidez?

18 MR. VERHEUL: No questions from the
19 Department, Mr. Hearing Officer, and we thank Mayor
20 Benavidez for his testimony.

21 MR. BENAVIDEZ: Thank you, all.

22 MR. MC QUILLAN: Mr. Hearing Officer, I have
23 no questions for the Mayor. Thank you.

24 HEARING OFFICER CHAKALIAN: Do any
25 Commissioners have questions for this witness?

1 Do any members of the public have questions
2 for this witness?

3 Ms. Nokes, may this witness be excused?

4 MS. NOKES: Yes. Thank you, Mr. Hearing
5 Officer.

6 HEARING OFFICER CHAKALIAN: Would you call
7 your fourth witness, please.

8 MS. NOKES: Yes. Petitioners will now call
9 Frank, or Pancho, Adelo.

10 FRANK "PANCHO" ADELO
11 having been first duly sworn or affirmed, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. NOKES:

15 Q. Will you please state your name for the
16 record?

17 A. My name is Frank "Pancho" Adelo.

18 Q. Thank you.

19 Mr. Adelo --

20 A. Everybody knows me --

21 Q. Thank you, Mr. Adelo.

22 Will you please describe your relevant
23 experience as a witness in this matter?

24 A. So I was born and raised in Pecos. My family
25 has been in business providing goods and services for

1 residents and visitors in the Pecos valley for a
2 hundred -- for the past 103 years. I currently own a
3 convenience store and a takeout restaurant. I own 12
4 acres of irrigated pastureland and farmland on the
5 Acequia del Molino adjacent to the Pecos River in the
6 heart of the village.

7 I am also President of the Upper Pecos
8 Watershed Association, UPWA, a petitioner in this
9 matter, and before that I was its vice-president since
10 its inception in 2006.

11 Q. Thank you, Mr. Adelo.

12 And is Petitioners' Exhibit 20 an accurate
13 copy of your resume?

14 A. Yes, it is.

15 Q. And, Mr. Adelo, you prepared testimony for
16 this proceeding which is Exhibit 19; is that correct?

17 A. Yes, ma'am.

18 Q. And is your testimony accurate to the best of
19 your knowledge?

20 A. Yes, it is.

21 Q. And would you please confirm for the record
22 today that you would like to adopt your testimony under
23 oath here today?

24 A. Yes, I would.

25 Q. Thank you.

1 Mr. Adelo would like to present his testimony
2 before the Commission.

3 And so please proceed, Mr. Adelo.

4 MR. ADELO: Thank you.

5 Thank you, Hearing Officer, Madam Chair and
6 Commissioners, for providing me the opportunity to speak
7 with you.

8 I was fortunate to grow up next to New
9 Mexico's -- one of New Mexico's premier trout fisheries
10 in an era before cell phones and video games. In grade
11 school my friends and I would ride our bikes to the
12 Pecos River and fish. I caught my first fish behind the
13 Pecos Benedictine Monastery. As soon as I could drive,
14 in eighth grade or so, I would get my father's truck and
15 race up the canyon to wet a line before dark. I took a
16 keen interest in trout fishing, especially fly fishing.

17 I attended college in Western Massachusetts
18 and received my degree from the University of
19 Massachusetts in economics. My fly rod accompanied me
20 eastward. My first experience fishing in New England
21 was on the Deerfield River. Every pullout on the road
22 that meandered with the Deerfield River had warning
23 signs for horns that signaled impending rise in water
24 level.

25 As I drove up the valley, I came across a

1 gigantic structure. It was Yankee Rowe nuclear power
2 plant, America's third nuclear power plant. And it was
3 striking to see such an enormous structure in such a
4 picturesque rural setting.

5 On another quest for trout, I drove to New
6 Hampshire and came across a stream that looked ideal for
7 trout, except that it had a brownish tinge and was void
8 of any insect life. I found out later that there was a
9 paper mill upstream.

10 So these experiences made me realize that
11 water quality, no matter what the setting, is not always
12 guaranteed. So when I returned home after college, I
13 was determined to preserve the Upper Pecos watershed.
14 Serving as President of UPWA is part of my work to
15 protect this exceptional area.

16 UPWA was formed in 2006 by residents concerned
17 about the watershed, and our main goals are to protect
18 and improve the health of the watershed, address
19 significant and environmental issues in the watershed
20 and preserve traditional and cultural uses for the
21 benefit of local economy.

22 The Pecos Canyon is a hotspot for tourists
23 from Santa Fe, Albuquerque, surrounding New Mexican
24 communities and surrounding states. And one way UPWA is
25 trying to address the environmental concerns is to focus

1 on the overuse of campgrounds and recreation areas
2 within the watershed. To date UPWA has been awarded 14
3 Section 319 grants from the US Environmental Protection
4 Agency, and we have received approximately 1.6 million
5 for implementation, public outreach, for restoration
6 work on the watershed.

7 And UPWA was a leading advocate for the
8 creation of Pecos Canyon State Park.

9 The watershed is part of the Rio Grande Basin
10 located in North Central New Mexico about 10 to 20 miles
11 east of Santa Fe, and the area covered by our watershed
12 extends from the headwaters of the Pecos River in the
13 wilderness and its tributaries to the point where
14 Interstate 25 crosses the river. Our watershed includes
15 the communities of Pecos, Tererro, Cowles, Glorieta,
16 Upper and Lower Colonias, North and San Ysidro -- North
17 and South San Ysidro, Rowe and San Jose. The Village of
18 Pecos is the only incorporated municipality within our
19 upper watershed.

20 Pecos is a small community, and we can all
21 agree here in town that the river is our lifeblood. Our
22 community views the Upper Pecos watershed as a whole
23 interconnected system. There's nothing more relaxing
24 than to sit by the river and just be. One of the best
25 things, especially in these past couple years, is to

1 throw rocks in the river as kind of a symbolic way of
2 letting go of your worries.

3 Of the many visitors that I speak with and
4 many well seasoned visitors, who have traveled the
5 world, they tell me how special the Upper Pecos
6 watershed is.

7 There's a lot of adventure packed into our
8 area, as much as any part of New Mexico. Pecos is an
9 ancient place. The history, the culture and the beauty
10 and the diversity of nominated waters serve as a
11 tremendous backdrop for all that there is to experience
12 here. Recreational tourism in the nominated area will
13 not only include fishing, camping and hiking, but also
14 birding, biking, nature photographer -- nature
15 photography, skiing, snowshoeing, tubing and
16 snowmobiling, as well.

17 This area is extremely important to our
18 farmers. There are many local farms in the area that
19 rely on clean water to irrigate their crops. Agua es
20 vida, and the waters and aquatic life of New Mexico's
21 Upper Pecos watershed sustain our farmers and ranchers
22 as they depend on it for their livelihoods and their way
23 of life.

24 In short, the nominated waters of the Upper
25 Pecos watershed play a vital role contributing to our

1 state's economy, recreational activities and natural
2 beauty. Protecting the nominated waters as ONRWs would
3 benefit the state by preserving and enhancing these
4 economic, recreational and natural resources for present
5 and future generations by preventing degradation of the
6 high-quality waters that are the lifeblood of the Pecos
7 region.

8 It is important to note that the Pecos River
9 and its tributaries can still brag of its high
10 qualities. Yes, we do have an abandoned mine on the
11 watershed, but because of the actions undertaken by the
12 state and the former owners of the mine, water quality
13 on the Upper Pecos watershed have improved over the past
14 30 years.

15 Let us imagine for a moment that you had to
16 conduct a cost/benefit analysis of some project
17 affecting water quality of the -- of our -- of our
18 watershed. Part of that equation would quantify how
19 many visitors are in -- come -- how many visitors the
20 river sees and how much they spend getting to the river
21 and enjoying it. And then you do the math, you do the
22 multiplication.

23 What the analysis cannot do, however, is put a
24 figure on the number of people who would not accept
25 having a high-quality watershed to use and enjoy. In

1 other words, how much would you have to pay people not
2 to have a high-quality watershed to enjoy, whether it be
3 for fishing, hunting, hiking, worshipping, biking,
4 camping or farming. Any cost/benefit analysis would be
5 misleading because what the Upper Pecos watershed
6 provides is priceless. You can't put a price on what
7 our high-quality water provides.

8 With this being said, I urge you to support
9 the nomination of the Upper Pecos watershed for ONRW
10 status. Such a designation would be a huge benefit not
11 only to our local community, but also to the state as a
12 whole and to all those who visit, work and play in the
13 Upper Pecos region for both today and future
14 generations.

15 Thank you. And that's what I have.

16 MS. NOKES: Thank you, Mr. Adelo.

17 That concludes Mr. Adelo's direct testimony,
18 and he will now stand for cross-examination from the
19 parties and the Commission.

20 HEARING OFFICER CHAKALIAN: Do any of the
21 parties have cross-examination for this witness?

22 MR. VERHEUL: The Department has no questions,
23 and we thank Mr. Adelo for his testimony.

24 MR. MC QUILLAN: Mr. Hearing Officer, I have
25 no questions for Mr. Adelo. Thank you.

1 HEARING OFFICER CHAKALIAN: Do any
2 Commissioners have cross-examination for this witness?

3 EXAMINATION

4 BY THE COMMISSION:

5 COMMISSIONER DOMINGUEZ: Mr. Hearing Officer.

6 HEARING OFFICER CHAKALIAN: Yes, Commissioner
7 Dominguez.

8 COMMISSIONER DOMINGUEZ: Thank you,
9 Mr. Hearing Officer.

10 Mr. Adelo, thank you for your testimony today.

11 MR. ADELO: You're welcome.

12 COMMISSIONER DOMINGUEZ: I wanted to quickly
13 interject here.

14 In reading your written testimony and what you
15 covered orally, I found one part there really -- really
16 interesting and intriguing to me. You pointed out that
17 Pecos Canyon is a real hotspot for tourism and that one
18 portion of what the Upper Pecos Watershed Association
19 does is to help deal or address the overuse and abuse of
20 the campgrounds, recreation areas, so forth.

21 So given that and -- and the fact that if --
22 if this is approved as an ONRW, that designation would
23 likely be used to increase tourism. So under that
24 scenario, how do you balance this issue of potentially
25 having an increase in tourism and address the issue that

1 you've already pointed out of the overuse of the
2 recreation and campground areas which -- which
3 ultimately could lead to some degradation? So it seems
4 to be this double-edged sword.

5 Does that kind of make sense of what my
6 question is there?

7 MR. ADELO: Yes. I see -- I see what you're
8 getting at.

9 The -- so in 2020 we probably saw -- we -- not
10 probably saw -- we saw the most numbers that we ever
11 have seen in the canyon. The numbers in 2020 were
12 incredible.

13 One way is that the Upper Pecos watershed that
14 we just went to help with that is to -- we actually
15 provided porta-potties for people up the canyon. So
16 having -- but in order to continue this -- I mean,
17 tourism is going to increase all over New Mexico and
18 probably all over the Western -- Western states.

19 But an ONRW designation does not necessarily
20 mean that it's going to be -- I mean, yes, people want
21 to see an Outstanding National Resource Water, but
22 with -- we -- that's the importance of having this
23 designation, is in order to protect it, as well. And
24 with the increased numbers, that -- yes, that is
25 something that we are going to have to be dealing with

1 in the future. That's -- there's no doubt about that.

2 COMMISSIONER DOMINGUEZ: Okay. Thank you,
3 Mr. Adelo. It's -- it just kind of highlights a
4 potential of a double-edge sword there. So I appreciate
5 your comments and appreciate your feedback.

6 Mr. Hearing Officer, that's all I have --
7 questions I have for this witness. Thank you.

8 HEARING OFFICER CHAKALIAN: Thank you,
9 Commissioner Dominguez.

10 Are there any other Commissioners?

11 Are there any members of the public?

12 Ms. Nokes, may this witness be excused?

13 MS. NOKES: Yes. Thank you, Mr. Hearing
14 Officer.

15 HEARING OFFICER CHAKALIAN: Would you call
16 your fifth witness.

17 MS. NOKES: Yes. Petitioners will now call --

18 MR. BENAVIDEZ: Can I say something?

19 I'm sorry. I was on mute.

20 I'd like to say something to Pancho's
21 testimony real quick.

22 HEARING OFFICER CHAKALIAN: Okay.

23 Mr. Benavidez, are you asking a question?

24 MR. BENAVIDEZ: Well, I'd just like to say
25 that the -- what they've done to the campgrounds at the

1 canyon and cleaning up the campgrounds is helping with
2 the people coming in. They know that there's only so
3 many spots. So as we get in more campgrounds and get
4 them cleaned up and preserved so that people can use, I
5 think it will help with the -- with the rush of people
6 that we have coming in.

7 That's all I had to say. Okay?

8 Thank you, guys.

9 HEARING OFFICER CHAKALIAN: Ms. Nokes?

10 MS. NOKES: Thank you, Mayor Benavidez.

11 Petitioners will now call Ms. Lela McFerrin as
12 a witness.

13 Do we have Ms. McFerrin? There she is.

14 LELA MC FERRIN

15 having been first duly sworn or affirmed, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. NOKES:

19 Q. Good morning, Ms. McFerrin.

20 Will you please state your name for the
21 record?

22 A. My name is Lela McFerrin.

23 Q. Thank you.

24 And will you please describe your relevant
25 experience as a witness in this matter?

1 A. I'm the Vice-President of the Upper Pecos
2 Watershed Association, UPWA, and have served on the
3 board for 12 years and have been project manager on five
4 river restoration grants funded by Section 319 of the
5 federal Clean Water Act.

6 Excuse me.

7 Prior to that I was a paralegal for 25 years,
8 specializing in environmental law and business -- and a
9 business owner in Santa Fe and Pecos for 25 years.

10 My husband and I have lived on the banks of
11 the Pecos for 46 years in the windy bridge area of the
12 canyon, which is surrounded by Santa Fe National Forest
13 and is part of the nominated area.

14 We have seen the river at low flows, high
15 flows and from spring runoff and several flooding events
16 from six major wildfires in the area over the last 22
17 years of drought conditions. The worst of the flooding
18 brought black water down the river, full of ash and
19 debris from the Tres Lagunas fire, resulting in major
20 fish kills and damage to farmlands and the acequia
21 system.

22 I'm involved in my community and am a founding
23 member of the Pecos Business Association.

24 Q. Thank you, Ms. McFerrin.

25 You prepared testimony for this proceeding

1 which is Exhibit 15; is that correct?

2 A. Yes, ma'am.

3 Q. And is your testimony accurate to the best of
4 your knowledge?

5 A. Yes, it is.

6 Q. And would you confirm that you would like to
7 adopt your testimony today under oath for the record?

8 A. Yes, I would.

9 MS. NOKES: And now Ms. McFerrin has prepared
10 a short summary of her testimony.

11 And so please proceed with your presentation.

12 MS. MC FERRIN: Yes, I would. However, I
13 would like to adopt our Hearing Officer's recommendation
14 to only amend my summary because you already have it as
15 Exhibit 16 -- or Exhibit 15, I believe. So I will only
16 update that written summary -- that written testimony
17 and not read my entire summary, if that's okay.

18 You have in the record Exhibit 16 -- excuse
19 me. My testimony goes to the outreach to the public for
20 our nomination of the Upper Pecos. You have Exhibit 16
21 attached to our testimony which shows that as of
22 March 10th we have received over a hundred letters of
23 support.

24 As of yesterday we've received a total of --
25 excuse me -- a total of 128 letters of support from

1 elected officials, organizations, individuals and
2 businesses, 244 e-mails in support of the petition and
3 1,354 signatures on two different petitions posted on
4 the Internet. Between our mailing list and our social
5 media outreach, we reach over 3,000 people in the state
6 and nationally.

7 That is basically how -- all that I wanted to
8 amend to my summary. If anybody has any questions, I'd
9 be glad to answer them.

10 Is that okay, Kelly?

11 MS. NOKES: Thank you, Ms. McFerrin.

12 That will conclude Ms. McFerrin's direct
13 testimony, and she is now prepared to address any
14 questions from the Commissioners or parties.

15 HEARING OFFICER CHAKALIAN: Are there any
16 parties that wish to cross-examination Ms. McFerrin
17 based on her written prefiled testimony?

18 MR. VERHEUL: No questions from the
19 Environment Department, but we thank Ms. McFerrin for
20 her testimony.

21 MR. MC QUILLAN: Mr. Hearing Officer, I have
22 no questions. Thank you.

23 HEARING OFFICER CHAKALIAN: Are there any
24 Commissioners with cross-examination for this witness?

25 Are there any members of the public?

1 Ms. Nokes, may this witness be excused?

2 MS. NOKES: Yes, Mr. Hearing Officer.

3 HEARING OFFICER CHAKALIAN: Would you call
4 your sixth witness, please.

5 MS. NOKES: Yes. Petitioners would now like
6 to call Ms. Rachel Conn as a witness.

7 RACHEL CONN

8 having been first duly sworn or affirmed, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. NOKES:

12 Q. Good morning, Ms. Conn.

13 Would you please state your name for the
14 record?

15 A. Rachel Conn.

16 Q. And, Ms. Conn, you prepared testimony for this
17 proceeding which is Exhibit 2; is that correct?

18 A. Correct.

19 Q. And is your testimony accurate to the best of
20 your knowledge?

21 A. It is. Thank you.

22 Q. And would you confirm that you are willing to
23 adopt your testimony under oath here today?

24 A. Yes. I do.

25 Q. Thank you.

1 Ms. Conn has prepared a short PowerPoint
2 presentation summarizing her testimony that we filed
3 with the Commission on April 8, 2022.

4 And, Ms. Conn, please go ahead and proceed
5 with your presentation.

6 MS. CONN: Thank you.

7 Let me just get the presentation up here.

8 Oops.

9 Are you all now able to see?

10 MS. NOKES: That looks great, Ms. Conn. Thank
11 you.

12 MS. CONN: Great.

13 All right. Mr. Hearing Officer, Madam Chair,
14 Members of the Commission, thank you for the opportunity
15 to testify before you here today.

16 Before I get started and go through this
17 PowerPoint, I'd like to point out that all the photos in
18 this presentation in the PowerPoint that you'll see
19 before you today are of the Pecos -- of the Upper Pecos
20 watershed, with a couple of -- just a couple of
21 exceptions. And when they aren't, it is noted in the
22 PowerPoint that it isn't of the -- the Upper Pecos
23 watershed.

24 First off, I will -- there we go.

25 First off, I wanted to start with my

1 qualifications. I have worked on water quality issues
2 in New Mexico for 22 years. I have provided trainings
3 on the Clean Water Act, including water quality
4 standards and Outstanding Waters in particular
5 throughout the state for those 22 years. And I have
6 provided testimony before the Water Quality Control
7 Commission on many occasions, including during the last
8 four triennial reviews and all previous Outstanding
9 Waters hearings.

10 And my full resume is included as Exhibit 3,
11 Petitioners' Exhibit 3.

12 For a little overview -- for a brief overview
13 of Outstanding Waters in general, water quality
14 standards include three components, designated uses,
15 criteria and antidegradation. And our antidegradation
16 procedures and policy can be found in our regulations at
17 20.6.4.8 NMAC, so our New Mexico water quality standard
18 regulations.

19 Antidegradation itself has three tiers, has
20 three components, and Outstanding Waters, Outstanding
21 National Resource Waters, are the third tier. They are
22 the highest level of protection afforded to waters in
23 the state under our surface water quality standards.
24 Once a water is designated as an Outstanding Water, no
25 degradation is allowed, except for short-term

1 degradation associated with restoration and public
2 safety activities.

3 The designation is beneficial to existing uses
4 of the watershed such as acequias, recreation, farming
5 and ranching.

6 We have three designations to date. We have
7 the -- already in the state. We have the Rio Santa
8 Barbara, we have all waters including wetlands in the
9 Valle Vidal and all named perennial waters and wetlands
10 in the US Forest Service wilderness areas.

11 I would also like to point out that there are
12 specific provisions in our regulations that -- that
13 exempt acequias operations from any new requirements
14 under designation and also protects existing uses such
15 as ranching. And those can be found at 20.6.4.8A.(3)(d)
16 and (e) in our regulations.

17 For a brief overview of our petition -- of the
18 petition before you today, the -- you've heard from many
19 of the petitioners already today, and you will hear from
20 a couple more shortly. These petitioners represent a
21 broad range of interest in the Upper Pecos watershed.

22 In addition, this petition is supported by
23 numerous local and statewide individuals, organizations
24 and businesses, that you just heard from Ms. McFerrin
25 about some of those -- some of that support. These

1 people depend on the -- on the waters for recreation in
2 the Upper Pecos watershed. They depend on these waters
3 for their traditional way of life and their livelihoods,
4 and -- and these people value the remarkable beauty and
5 exceptional ecological and recreational attributes of
6 these waters.

7 I want to point out that the term "Upper Pecos
8 watershed" in my testimony and in this PowerPoint here
9 today as well as in the petition itself refers to the
10 nominated streams and wetlands nominated in the petition
11 and identified in Maps 1 and 2 and Tables 1 and 4 and
12 that those maps and tables can be found in Petitioners'
13 Exhibit 5.

14 Petitioners have satisfied all procedures for
15 this nomination. There are six requirements for
16 nominating an ONRW as set forth in the regulations at
17 20.6.4.9A NMAC. And I will go through -- in this
18 presentation I will go through each of those six
19 requirements.

20 The first requirement is a map of -- sorry.
21 Excuse me. I've been fighting a bit of a cold so please
22 excuse. My voice cracks a little bit.

23 The first requirement is a map of the
24 nominated surface water of the state, including the
25 location and proposed upstream and downstream

1 boundaries.

2 A map was included in the petition as well as
3 in the petitioners' NOI as Exhibit 5, as I mentioned
4 before. Here are those maps. On the left we have a map
5 of the streams, the nominated streams, and on the right
6 we have a map of the nominated wetlands.

7 We have also provided a table that -- that
8 lists each of the nominated waters. You see in the --
9 again this is also Exhibit -- provided in Exhibit 5 as
10 well as in my written testimony on pages 9 through 13.

11 In this table you can see that we name each
12 stream. Each stream is named, the associated miles of
13 those streams, the downstream boundary, the upstream
14 boundary, and then in addition we provided the latitude
15 and longitude of the mouth of the stream.

16 Over here is the table of the wetlands, and
17 it's the label that's associated on the map, the type of
18 wetland, the acre of wet -- the acres of wetland and the
19 latitude and longitude where those are found.

20 In total, there's 179.93 miles of streams
21 being nominated and 42.96 acres of wetlands.

22 Again this is just an excerpt of these tables.
23 If you want to see the full tables, please refer to
24 Exhibit 5.

25 The second requirement is a written statement

1 and evidence based on the scientific principles in
2 support of the nomination, including specific reference
3 to one or more of the applicable ONRW criteria.

4 So this is really where the meat of the
5 nomination comes in, where it's found. And I will come
6 back to this in a second. I'm going to conclude with
7 going through the criteria as my -- part of my
8 presentation today. So I'm going to come back to this
9 second requirement at the end.

10 The third requirement is water quality data,
11 including chemical, physical or biological parameters if
12 available, to establish a baseline condition.

13 So this is -- I want to point out that the
14 requirement is to provide data if available. And
15 petitioners have provided water quality data in the
16 petition as well as in the NOI. Water quality data can
17 be found in Petitioners' Exhibit 6 of the NOI. We -- we
18 provided chemical, fields, geomorphology, benthic, fish,
19 temperature data. And again that can be found in
20 Exhibit 6 of the NOI.

21 The fourth requirement is a discussion of
22 activities that might contribute to the reduction of
23 water quality in the proposed ONRW.

24 There are several activities that could impact
25 water quality. Mining is one of them. More than

1 40 percent of stream reaches in western watersheds are
2 contaminated by acid mine drainage and associated heavy
3 metals. Acid mine drainage from mining activities have
4 caused massive fish kills and have poisoned migratory
5 birds at many sites across the west.

6 In addition, development and roads is another
7 activity that could impact water quality. Increased
8 sediment loading from roads and development can cause
9 substantial water quality problems. Pollution from
10 roads and bridges is one of the top two sources of
11 impairment in the State of New Mexico. So it's a very
12 real problem to our watersheds here in New Mexico.

13 Climate change is another real problem to --
14 to our waters here in New Mexico and the Upper Pecos
15 watershed. Climate change is resulting in warmer
16 temperatures in our streams. That's a really big
17 problem across the state. Temperature is also a problem
18 in the Pecos watershed. And that can lead to -- climate
19 change can also lead to more erosion due to the flashier
20 nature of precipitation.

21 So -- and healthy watersheds, by contrast, can
22 perform ecosystem services that can help provide
23 resilience and adaptive capacity in the face of climate
24 change, which is why protections like ONRW protections
25 are very important to -- to pursue, so that we can -- we

1 can protect the resiliency of our watersheds.

2 Poorly managed recreational use is another
3 threat to water quality across the West, but also
4 specifically in the Upper Pecos watershed.

5 And I'd like to comment briefly on that based
6 on some questions by Commissioner earlier, that yes, it
7 is a big problem across -- across the West, especially
8 in the face of the pandemic, and it's not necessarily
9 the case that -- ONRW protections are not -- are not a
10 protection that is the goal of which is to draw more
11 people or to advertise the recreational significance of
12 the area.

13 The goal and the purpose of ONRW protections
14 is to -- is to protect those recreational values that
15 are found in our streams in New Mexico, and so the
16 protections will -- will be able to ensure that we don't
17 love to death our -- our special places like the Upper
18 Pecos. So it puts in -- in protections so that those
19 impacts can be mitigated and stopped.

20 The fifth requirement is any additional
21 evidence to substantiate such a designation, including
22 an analysis of the economic impact of the designation on
23 the local and regional economy within the State of New
24 Mexico and the benefit to the state.

25 Petitioners provided lots of additional

1 information, that's also included in our NOI, including
2 the economic significance, the cultural significance and
3 the national significance of -- of nominating -- of
4 protecting the Upper Pecos watershed as an Outstanding
5 Water.

6 These -- this information really goes toward
7 supporting the criteria for designation, and so I will
8 circle back around on this information when I get to
9 that -- that component, that second requirement, which
10 was the written statement in support of the ONRW based
11 on the criteria.

12 The sixth requirement for nomination is an
13 affidavit of publication of notice of the petition in a
14 newspaper of general circulation in the affected
15 counties and in a newspaper of general statewide
16 circulation.

17 As noted, when we requested this hearing in
18 November of 2021, we have -- the petitioners have put
19 notice of the petition in the Albuquerque Journal as
20 well as the Las Vegas Optic. And here are the
21 affidavits of publication of notice of the petition.
22 These can be seen in Exhibit 7, Petitioners' Exhibit 7.

23 In addition, there are notice requirements for
24 this hearing itself. The State Rules Act requires
25 notice in the New Mexico Register at least 30 days

1 before the hearing. Commissioners' rules require
2 publication of the notice in the New Mexico Register and
3 in a newspaper of local -- statewide and local newspaper
4 at least 60 days.

5 So notice of the hearing was published in the
6 New Mexico State Register on January 26, and notice of
7 the hearing was published in the Albuquerque Journal on
8 February 5th and in the Las Vegas Optic on February 4th.
9 Again those can be viewed in Petitioners' Exhibit 8.

10 So getting back to the meat of the -- of the
11 nomination, this number 2, which is the written
12 statement and evidence based on the scientific
13 principles in support of the nomination.

14 I've included here the criteria for
15 designating an Outstanding Water. This language comes
16 directly from our regulations at 20.6.4.9B NMAC. I've
17 added the emphasis, the "ors" and the "and."

18 And so to go through it really briefly here,
19 we have a -- that a water can -- is -- qualifies to be
20 an Outstanding National Resource Water if -- when the
21 Commission determines that the designation is beneficial
22 to the State of New Mexico and -- that's the one
23 "and" -- and the water is a significant attribute of
24 these various already protected areas like a special
25 trout water or a federal Wild and Scenic River, and

1 there's several others there, as well, as you can see,
2 or the water has exceptional recreational or ecological
3 significance, or the existing water quality is equal or
4 better than the numeric criteria.

5 And so this -- so it's important to realize
6 that you only need to have two -- basically two of these
7 criteria, the first one, the beneficial to the state,
8 and then one of these various other criteria. I'll now
9 go through how the Upper Pecos watershed meets this --
10 these criteria.

11 Petitioners have satisfied the criteria for
12 designation. So all nominated waters meet the benefit
13 to the state criterion.

14 In addition, all nominated waters meet the
15 ecologically significant criterion. And Dr. David
16 Propst, who is testifying later today, will speak to the
17 ecologically significant criterion in -- in a little
18 bit.

19 In addition, all nominated waters meet
20 recreational -- the recreationally significant
21 criterion, many of the nominated waters meet the water
22 quality criterion, and some of the nominated waters meet
23 the special attribute criterion.

24 Exhibit 4 -- Petitioners' Exhibit 4 lays out
25 which waters meet which criteria. And here is an

1 excerpt of that exhibit.

2 You can see here on the table we have listed
3 the water body in the first column, and then some
4 information, the stream miles and description about each
5 water body. Then we get into the different criteria in
6 the remaining columns.

7 This first column is the benefit to New
8 Mexico. And as I mentioned in the previous slide, all
9 the nominated waters meet this criterion. And then we
10 have listed the other -- other criterion. Where the
11 table is blue, it means that that specific water body
12 has met that criterion.

13 You can see here for the Holy Ghost Creek
14 tributaries 1 through 13 that they have met these three
15 criterion -- criteria. Some waters meet more than
16 three. Again only two are required, and all of them
17 meet at least three, but some meet more. So for
18 example, down here with Jack's Creek you can see that
19 there are five criteria have -- have been met.

20 Again that's Exhibit -- Petitioners'
21 Exhibit 4.

22 And to -- and to get into the specifics of
23 each of that criteria, seven miles of the nominated
24 portion of the Pecos River is part of the Pecos Wild and
25 Scenic Rivers. So that meets that first special

1 attribute criteria.

2 Several of the nominated waters are special --
3 state special trout waters, including the Pecos River
4 from the Rio Mora confluence to Cowles and Jack's Creek
5 from the waterfalls downstream -- downstream of the New
6 Mexico Highway 63, upstream to its headwaters.

7 All of the nominated waters meet the
8 exceptional recreational significance criterion.
9 Annually thousands of visitors recreate at the seven US
10 Forest Service campgrounds that offer a total of 118
11 individual sites and three group sites. The Jack's
12 Creek Campground is listed as one of the top 10
13 campgrounds in the state.

14 There are many recreational activities that
15 occur in the Upper Pecos watershed, including camping,
16 hiking, horseback riding, hunting, fishing, bird
17 watching, backpacking, rafting. The list goes on. And
18 here you can see some photos of recreational activities
19 in the watershed. We have some -- a person down here
20 about to go down this little rapid on the mainstream of
21 the Pecos, and then folks camping in the Upper Pecos
22 watershed.

23 In addition, the Village of Pecos has included
24 in their economic development -- development plan how
25 outdoor recreation in the Pecos Canyon is a key

1 component of the local economy. And several local
2 outfitters take folks on tours and -- and trips in the
3 Upper Pecos watershed and depend on the -- on the clean
4 waters for their business.

5 The -- and then we get into the recreational
6 significance of the Upper Pecos watershed in terms of
7 its fishing attributes, fishing significance. The
8 waters of the Upper Pecos watershed are renowned for
9 trout fishing. The mainstem of the Pecos -- the
10 nominated section of the mainstem of the Pecos sees
11 158 -- over 158,000 angler days per year. This is the
12 second highest fish stream reach in the entire state.
13 Fly fishing guides have named the Upper Pecos number 6
14 out of 11 of the top rated best places to fly fish in
15 New Mexico.

16 And this is only increasing. This popularity
17 and recreational significance of fishing in the Upper
18 Pecos watershed is -- is increasing. So in -- between
19 the one survey time, which was 2018 to 2019, and the
20 next survey event, which was the 2020 to 2021 survey
21 event, done by the New Mexico Department of Game and
22 Fish, they -- the mainstem saw an increase of over
23 17,000 anglers. And while fishing on Jack's Creek
24 increased tenfold and over 10 percent on the Rio Mora in
25 that same period. So this -- this -- fishing in the

1 Pecos is -- is definitely increasing.

2 And I will note as I -- I spoke to people
3 about testifying before you today, I mentioned it to a
4 number of people recently, that I have heard a number of
5 times people say "Hey, oh, I learned to fish on the
6 Pecos. That's where I learned to fish." Or "That's
7 where I take my family to go fishing." So this is --
8 this is a well known and well loved area for fishing.

9 You can -- and to see some of those numbers
10 that I mention here, you can look at Petitioners'
11 Exhibit 10, which has the angler days.

12 So these waters in the Upper Pecos watershed
13 are home to the Rio Grande cutthroat trout, rainbow
14 trout, brown trout and cutthroat trout, and each of the
15 16 named waters provides habitat for trout. Here is a
16 list. This is Table 3 in my written testimony, which
17 can be found on page 27 through 28 of my testimony. It
18 lists which species of trout are found in each of the --
19 the drainages.

20 In addition, all nominated waters have many
21 species of economic and recreational importance. These
22 are also referred to as SERI. So this information can
23 again -- actually the information from the last slide
24 about trout as well as the species information is from
25 the New Mexico Department of Game and Fish Environmental

1 Review Tool reports, which can be found in Petitioners'
2 Exhibit 9. Those full reports can be found in
3 Petitioners' Exhibit 9. And these tables that I have
4 included here are a summary of that information.

5 Again here is a summary. This is Table 4,
6 and -- which can be found on page 31 of my written
7 testimony, and again the source data is from Exhibit 9.
8 So this lists the nominated streams and the species of
9 economic and recreational importance by stream.

10 Now, moving on to the water quality criterion.
11 Seven of the nominated named streams and one segment of
12 the nominated portion of the Pecos River meet or exceed
13 water quality criteria associated with the aquatic life
14 and contact uses. Those seven streams are listed here,
15 and the stretch of the Pecos -- there's a portion of the
16 nominated stretch of the Pecos that exceeds -- meets
17 water quality standards, and that's Jack's Creek to the
18 headwaters -- to the wilderness boundary.

19 This existing water quality data is found in
20 Exhibit 6, where you can find this table, which I have
21 provided an excerpt here. Here is -- this table
22 includes the water body, the nominated water body. It
23 includes -- it summarizes the existing uses and which --
24 and when -- if there is -- some water bodies have it,
25 some don't -- site-specific criteria, and then it goes

1 on to summarize the use support and whether it meets --
2 this last column is whether it meets that specific
3 criteria for ONRW designation.

4 MS. JONES: Excuse me, Madam Witness. You
5 have five minutes.

6 MS. CONN: Thank you.

7 So moving on to the benefit of the state.
8 There are numerous benefits to the state, includes
9 supporting a rich tradition of acequia irrigation and
10 farming, supporting ranching, supporting cultural
11 values. There's economic benefits and watershed
12 protection.

13 As you heard from Lieutenant Governor Toya
14 earlier today, the Pecos Pueblo for generations depended
15 on the clean water in the Pecos River and this is very
16 important to Jemez Pueblo today as the ancestors of
17 Pecos Pueblo.

18 There are many acequias and farming and
19 ranching operations that depend on clean water in the
20 Pecos River. Here -- there's 55 acequias that divert
21 from the Pecos River. Here you have a picture of some
22 of those farmers and ranchers in the Pecos watershed.
23 Here's a goat farmer and a rancher, and you can see
24 this -- you can hear from these folks in videos that
25 were provided as Petitioners' Exhibit 17.

1 This is actually Mr. Ralph Vigil irrigating
2 his fields. He is in all of those videos. The second
3 video link provided in Petitioners' Exhibit 17, you can
4 hear from -- from this goat farmer and from this
5 rancher. So I urge the Commissioners to -- to check out
6 those videos to hear -- to hear these voices.

7 There are many economic benefits to protecting
8 the Upper Pecos watershed. The nominated -- as I
9 mentioned previously, the nominated stretch of the
10 mainstem of the Pecos is the second most fished river in
11 the state.

12 In 2013 the New Mexico Department of Game and
13 Fish put together a report documenting the economic
14 benefits of outdoor recreation county by county. And
15 while they didn't parse that data out to be stream
16 specific in that 2013 report, and so we don't have the
17 Pecos specific numbers for that report, we do have Pecos
18 specific numbers for other years that the Department of
19 Game and Fish gathered in a different process through
20 their surveys.

21 And you can see in the report here summarized
22 there were 118,000 fishing days in that New Mexico
23 Department of Game and Fish report, generating over
24 6.5 million in spending associated with fishing, and
25 there are 116 jobs created from that fishing and hunting

1 activity.

2 And -- and while we don't have it for that
3 particular year in 2013, we do have fishing data from
4 other years specific to the Upper Pecos. Again that's
5 provided in Petitioners' Exhibit 10. And you can see
6 that these numbers make up -- the numbers of the Upper
7 Pecos watershed fishing really makes up the lion's share
8 of fishing in countywide, and we can assume that fishing
9 in the Upper Pecos watershed is a big economic driver
10 for the county.

11 And finally, protecting watersheds is a
12 benefit to the state because of the essential ecosystem
13 functions that watersheds provide, including the Upper
14 Pecos watershed. So these headwater watersheds in our
15 state, including the Upper Pecos watershed, provides
16 services like sediment control, flood control, and as I
17 mentioned previously, protecting the Upper Pecos
18 watershed will help provide resiliency in the face of
19 climate change.

20 And so in closing, by protecting the water
21 quality and the nominated waters of the Upper Pecos
22 watershed, the watershed and the communities and
23 individuals that depend on the clean water in the Pecos
24 watershed will benefit, and this in turn will benefit
25 the region and the state as a whole.

1 And again here is the excerpt of Exhibit 4
2 which summarizes the criteria, which waters meet which
3 criteria.

4 And with that, I will conclude my testimony
5 and stop sharing -- there we are -- and stand for any
6 cross-examination or questions.

7 MS. NOKES: Thank you, Ms. Conn.

8 HEARING OFFICER CHAKALIAN: Any
9 cross-examination questions from any party for this
10 witness?

11 MR. VERHEUL: The Environment Department has
12 no cross-examination questions, but thank you, Ms. Conn,
13 for your testimony.

14 MR. MC QUILLAN: Mr. Hearing Officer, I have
15 no questions. Thank you.

16 HEARING OFFICER CHAKALIAN: Are there any
17 Commissioners who have cross-examination for Ms. Conn?

18 EXAMINATION

19 BY THE COMMISSION:

20 COMMISSIONER THOMSON: Mr. Hearing Officer,
21 this is Commissioner Thomson.

22 HEARING OFFICER CHAKALIAN: Please.

23 COMMISSIONER THOMSON: Ms. Conn, thank you.
24 That was a great presentation. And I -- I have read the
25 nominated petition with some -- with some detail.

1 My question is much of the land in the -- in
2 this watershed is owned by and managed by the federal
3 government, and -- and some of the examples of
4 degradation that you showed might be attributed to poor
5 management land, particularly overgrazing, possibly fire
6 management, things like that.

7 So my question is if -- if this petition is
8 adopted by the Commission, what is the relationship --
9 what's the regulatory relationship between the State of
10 New Mexico, the Environment Department, and the federal
11 government, principally the Forest Service?

12 Thank you.

13 MS. CONN: Commissioner Thomson, thank you for
14 that question.

15 Yes. It's a really good question, and -- and
16 there are -- there are several things that -- that
17 relate to that.

18 First of all, the US Forest Service and the
19 Environment Department have an MOU regarding Outstanding
20 Water protections that outlines how the Forest Service
21 will work with the state to ensure these protections
22 are -- are implemented.

23 And secondly, the Forest Service -- the Santa
24 Fe Forest Service has mentioned Outstanding National
25 Resource Waters as priority areas for protection in

1 their Land Management Plan. And so it recognized the
2 importance of protecting and implementing these
3 protections they -- in their new forest plan, in their
4 new Santa Fe National Forest forest plan. It identifies
5 these areas as critical areas for implementing
6 protection and restoration.

7 COMMISSIONER THOMSON: Thank you.

8 HEARING OFFICER CHAKALIAN: Are there other
9 Commissioners?

10 COMMISSIONER BRANCARD: This is Commissioner
11 Brancard.

12 HEARING OFFICER CHAKALIAN: Commissioner?

13 COMMISSIONER BRANCARD: Yes. This is more
14 just as sort of a curiosity here, Ms. Conn.

15 Under the criteria for significant attributes,
16 it says the water is a significant attribute of, and it
17 lists several things, and one of them listed is state
18 park.

19 Pecos Canyon State Park is located entirely
20 within this area. So I am curious as to why there has
21 been no mention of that in your testimony or the
22 petition.

23 MS. CONN: Yes. Thank you, Commissioner
24 Brancard, for that question.

25 Yes. I -- I wanted to include it in my

1 PowerPoint, but I hadn't included it, and it was
2 oversight in the written testimony, and I wasn't sure if
3 I was allowed to add that additional information in my
4 PowerPoint presentation. But there has been -- that was
5 a -- we were juggling a lot of information, and we
6 neglected to include that in the written testimony.

7 And there has been communication with the
8 Pecos Canyon State Park by petitioners. They have --
9 they have indicated their support. And so their --
10 that -- and actually we've been in conversation with --
11 the petitioners have been in conversation, as have I
12 actually briefly, with some of the consultants that the
13 state park has hired to write their new plan, their new
14 park plan.

15 And so they're very much engaged in -- in
16 preparing if -- if the Commission decides to designate
17 these waters as ONRWs, they are looking at the ways that
18 they can incorporate those protections into their state
19 plan -- their -- excuse me -- their state park plan or
20 their canyon -- the Pecos Canyon plan that they're
21 currently updating right now.

22 Sorry, a little tongue-tied there, but I think
23 you got the point.

24 COMMISSIONER BRANCARD: Thank you.

25 HEARING OFFICER CHAKALIAN: Commissioner

1 Dominguez?

2 COMMISSIONER DOMINGUEZ: Yes. Thank you,
3 Mr. Hearing Officer.

4 Good morning, Ms. Conn.

5 Thank you for your testimony today.

6 MS. CONN: Good morning.

7 COMMISSIONER DOMINGUEZ: I have several
8 questions here, and some of them are a little bit
9 general in nature, but as you pointed out, you've had
10 vast participation in ONRWs in the past, as with maybe a
11 few Commissioners, but not very many Commissioners. So
12 we have a lot of new Commissioners that this is their
13 first round in ONRW. So I have some questions that
14 maybe can provide context or perspective for fellow
15 Commissioners.

16 As you pointed out in your written testimony,
17 under the Clean Water Act the ONRWs allow for the
18 protection of the state's highest quality, most valued
19 surface waters in perpetuity. And the term that gets
20 utilized quite often in here is "exceptional."

21 So as a petitioner, how do you determine
22 exceptional versus really good or good waters within the
23 state? So I've never seen anything really clarified on
24 that. So from a petitioner standpoint, how do you make
25 that clarification on a graduated scale?

1 MS. CONN: So thank you, Commissioner
2 Dominguez, for that question.

3 Yes. The term "exceptional" is not defined
4 within our state regulations. So there isn't any
5 guidance provided in 20.6.4 specifically about how to
6 make that determination.

7 There is some specifics in the criteria.
8 Right? Some of the criteria lays that out. Right? So
9 outlines that it -- you know, its waters are considered
10 eligible to be an outstanding and to be a -- you know,
11 an exceptional water in our state if they're part of a
12 special attribute or if the water quality is equal to or
13 better, then the criteria for aquatic life and contact
14 uses. Right? So that -- that lays out some of the ways
15 to get at whether a water is outstanding or deserving of
16 these protections.

17 In terms of the recreational and ecologically
18 significant attributes, that's really a subjective --
19 you know, there is -- there is no, you know, objective
20 criteria provided in our regulations to make that
21 determination. And so that is determined through
22 gathering all the information such as we've done for you
23 today about how these waters are valued, both by -- by
24 the local community as well as statewide value to the
25 state to make the determination.

1 For example, the Pecos -- the stretch of the
2 Upper Pecos is the second most fished stream -- stream
3 reach in the state. So that, I think, goes to the
4 exceptional recreational values of the nominated water.

5 In addition, the petition as well as the
6 witnesses before you today identify some of the species
7 that are found in these waters that are important and
8 significant to the state as a whole, both economically
9 and recreationally, as well as species that are on the
10 endangered species list or are identified as state
11 endangered.

12 So those are some of the ways that we have put
13 before -- before you today to make the case that the
14 waters of the Upper Pecos are exceptional and
15 outstanding and deserving of this important protection.

16 COMMISSIONER DOMINGUEZ: Okay. Thank you,
17 Ms. Conn.

18 Kind of switching gears here, you talked about
19 some of the various problems that could cause
20 degradation and one of them being wildfire. And since
21 we're right in the middle of the start of wildfire
22 season, well, this kind of prompted a thought in my
23 mind, and this particular area has had some adverse
24 impacts from wildfire.

25 So with that said, and I think you've alluded

1 to some capabilities within the antidegradation policy,
2 one of them being the emergency response actions within
3 that, can you give us a little bit of perspective from a
4 response to wildfire activities? Does the designation
5 of an ONRW limit the tools that fire response agencies
6 have or could utilize or how they respond to wildfires
7 within an ONRW designation?

8 MS. CONN: Commissioner Dominguez, again a
9 really good question.

10 And as you pointed out, our regulations at
11 20.6.4.8.(3)(c) -- so again that's 20.6.4.8A.(3)(c). I
12 think I forgot the A in the first time I said that. So
13 it's 20.6.4.8A.(3)(c). Ooh. There was a lot there.
14 We're getting down to the specifics.

15 Is where it outlines emergency actions and how
16 emergency response actions are allowed without any
17 notice or without any procedures in designated ONRWs
18 when those responses are necessary for -- to protect
19 public health and safety. So an emergency response
20 action like firefighting can occur without any
21 additional requirements in the near term. After that --
22 in an ONRW. After that action has taken, then there are
23 some follow-up requirements of notice and accounting of
24 what those actions were after -- after the fact.

25 So thank you. I think it's a really important

1 and really good provision that we have in our state
2 regulations for emergency response.

3 COMMISSIONER DOMINGUEZ: Okay.

4 And to do -- elaborate on that a little
5 further, so -- so the use of a product such as slurry
6 from air drops would not be precluded in firefighting
7 activities.

8 MS. CONN: No. If the use of such slurry is
9 necessary to mitigate a threat to public health or
10 safety, the emergency response action may proceed prior
11 to providing notification in an Outstanding National
12 Resource Water.

13 COMMISSIONER DOMINGUEZ: Okay. Very good.
14 Thank you.

15 And then kind of switching gears again, in
16 your written testimony you've kind of referenced the
17 fact that hardrock mining has occurred in the Upper
18 Pecos and -- and then your written testimony goes on to
19 say and could occur in the future.

20 So are you indicating there that -- I'm
21 assuming there's probably entities that have potentially
22 mineral rights in the area? And getting to my
23 questions, then, if an entity does have mineral rights
24 and chooses to execute them, does the designation of an
25 ONRW preclude that entity in their use of mineral

1 rights?

2 MS. CONN: So Outstanding Water protections
3 don't prohibit activities. It's not about stopping
4 specific activities. The Outstanding Waters protections
5 is about protecting water quality and stopping
6 degradation. So any activity can -- can occur in a
7 designated watershed as long as that activity is not
8 causing pollution of the river.

9 COMMISSIONER DOMINGUEZ: Okay. Thank you for
10 that clarification. I think that's an important item.

11 And not to disappoint you, but I think that
12 ends my line of questioning.

13 Thank you, Mr. Hearing Officer.

14 Thank you, Mrs. Conn.

15 HEARING OFFICER CHAKALIAN: Thank you,
16 Commissioner Dominguez.

17 Are there any other Commissioners before we
18 move to public members?

19 COMMISSIONER PATTEN: Mr. Hearing Officer,
20 this is Commissioner Patten.

21 HEARING OFFICER CHAKALIAN: Please.

22 COMMISSIONER PATTEN: Thank you, Ms. Conn, for
23 your testimony.

24 I've got just a couple of questions.

25 And the first is related to overlap between

1 poorly -- think of the words that were used -- poorly
2 managed recreational activities and the water quality
3 standards. And I guess -- could you explain, you know,
4 if that were identified how the water quality standards
5 would apply to those activities or -- and what those
6 activities may be?

7 MS. CONN: Thank you, Commissioner Patten, for
8 that question.

9 Yes. So the water quality standards apply
10 to -- to all activities, right, that occur in a
11 watershed in a way. Right? Because, you know, nothing
12 can -- especially in an Outstanding Water, once a water
13 is designated as an Outstanding Water, no activities can
14 cause pollution, as I just mentioned in previous --
15 response to a previous question.

16 And so you could have recreational activities
17 with -- occurring that are causing degradation of water
18 quality standards, say E. coli or erosion, sediment
19 loading in a river, related to recreational -- poorly
20 managed recreational use. And the goal would be to --
21 would be to implement best management practices to stop
22 those -- those types of degradation from reaching the
23 river.

24 And this designation provides the additional
25 strength and incentive and requirement really of our

1 public land management agencies and state land
2 management agencies to implement those best management
3 practices and -- and also can be used as an incentive
4 for restoration as is outlined in our -- the forest
5 management plans have identified Outstanding Waters both
6 in the Carson and the Santa Fe as areas that are
7 priority for receiving restoration and protection
8 projects, projects similar to the ones that the Upper
9 Pecos watershed alliance is currently implementing in
10 the watershed.

11 So all of those things can go together to
12 create stronger protections and stronger response to
13 increased recreation use in a designated water body.

14 COMMISSIONER PATTEN: Okay. Thank you.

15 I guess the next question is related to the
16 statement early on in your testimony about temporary
17 degradation, temporary short-term degradation. And I
18 just want to make sure I understand what this -- this
19 proposal if it -- if it is approved would -- how it
20 would affect some activities up there, such as in-stream
21 habitat restoration, others like upland habitat
22 restoration for wildlife, control burns, those types of
23 activities.

24 Would they still be permitted?

25 MS. CONN: So Outstanding Water protections do

1 not prohibit short-term degradation associated with
2 restoration activities. You can see those provisions in
3 the regulations at 20.6.4.8A.(3) -- oh, A.(4). A.(4) is
4 the -- is where those -- that provision is outlined,
5 that restoration activities are -- that short-term
6 degradation associated with restoration activities is --
7 is allowed.

8 COMMISSIONER PATTEN: Okay.

9 And I guess, you know, it's great to see the
10 Rio Grande cutthroat trout mentioned throughout the
11 petition, and the Department has been working for a long
12 time restoring that species to the Upper Pecos
13 watershed, and we have ongoing activities to do the same
14 in the -- in the near future.

15 Do you believe that this designation would
16 have any effect on the ability to use a piscicide in the
17 Upper Pecos watershed as provided for in the water
18 quality standards?

19 MS. CONN: So I know that there's been
20 piscicide -- I always say piscicide. Is it piscicide?
21 Is that the correct pronunciation?

22 COMMISSIONER PATTEN: (Unintelligible and/or
23 inaudible).

24 MS. CONN: And so there has been applications
25 of piscicide in -- in the Valle Vidal, the waters of the

1 Valle Vidal, which are currently Outstanding Waters. So
2 this is -- and again that would be considered a
3 restoration activity and would be allowed under that
4 same provision that I mentioned before.

5 COMMISSIONER PATTEN: Okay. Thank you.

6 That's all I have, Mr. Hearing Officer.

7 HEARING OFFICER CHAKALIAN: Are there any
8 other Commissioners?

9 COMMISSIONER DOMINGUEZ: Mr. Hearing Officer,
10 Commissioner Dominguez with a follow-up.

11 HEARING OFFICER CHAKALIAN: Please.

12 COMMISSIONER DOMINGUEZ: Ms. Conn, kind of
13 follow-up question from Commissioner Patten's where he
14 was talking about the short-term -- short-term
15 degradation that may or may not be allowed.

16 You alluded to A.(4)(a), and underneath that
17 provide us some perspective there.

18 For those short-term -- potential short-term
19 degradations, those activities have to be reviewed by
20 the Environment Department, and I'm not for sure if any
21 of them have to come before the Commission, but there's
22 technically an approval process for that; is that
23 correct?

24 MS. CONN: Well, there's actually -- if you
25 look at it actually, there are -- there's a review

1 requirement for all surface waters of the state for
2 degradation associated with restoration. So if you look
3 at (a), that's for restoration projects in Outstanding
4 Waters. If you look at (b), for surface waters of the
5 state other than ONRWs, the Department shall review on a
6 case-by-case basis discharges that may result in
7 degradation from restoration.

8 So and -- and so it -- both ONRWs as well as
9 non-ONRWs have a review process outlined in the -- in
10 the standards. In terms of -- it is -- I believe in
11 terms of some of the restoration activities that
12 require -- that have occurred in an Outstanding Waters
13 that we already have designated in the state,
14 specifically in the Valle Vidal, where there's a lot of
15 restoration activities ongoing, supported by lots of --
16 of agencies as well as NGO partners, that there is a 401
17 process usually associated with those restoration
18 activities, and the Outstanding Water designation is --
19 has been included in that 401 permitting process, and
20 approval has been included there for restoration
21 activities.

22 COMMISSIONER DOMINGUEZ: Okay. Thank you,
23 Ms. Conn, and not to have put you on the spot with this,
24 when this question may be best suited to be pointed to
25 the witnesses for Environment Department for further

1 clarification. So --

2 And just from my perspective, I pronounce it
3 piscicide, also, contrary to Commissioner Patten.

4 MS. CONN: Thank you, Commissioner Dominguez.

5 HEARING OFFICER CHAKALIAN: Are there any
6 other --

7 Thank you, Commissioner Dominguez.

8 Are there any other Commissioners who have
9 cross-examination for Ms. Conn?

10 Are there any members of the public who wish
11 to cross-examine Ms. Conn?

12 Ms. Nokes, may this witness be excused?

13 MS. NOKES: Yes, Mr. Hearing Officer. Thank
14 you.

15 HEARING OFFICER CHAKALIAN: And I think this
16 would be a good time to take a 10-minute break before we
17 come back for your seventh witness.

18 So it is now 11:36. Let's come back at 11:46.

19 We are taking public comment at about noon
20 today.

21 Ms. Jones, is there any -- are there any
22 public members who have signed up for comment?

23 MS. JONES: Not at this point, Mr. Hearing
24 Officer.

25 HEARING OFFICER CHAKALIAN: Okay. We'll be

1 back on the record at 10 -- excuse me -- 11:46.

2 Thank you.

3 (Proceedings in recess from 11:37 a.m. to
4 11:46 a.m.)

5 HEARING OFFICER CHAKALIAN: Ms. Nokes, are you
6 ready to call your seventh witness?

7 MS. NOKES: Thank you, Mr. Hearing Officer.

8 Yes. We will be calling Mr. Toner Mitchell
9 next to the stand.

10 TONER MITCHELL

11 having been first duly sworn or affirmed, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. NOKES:

15 Q. Thank you.

16 Mr. Mitchell, will you please state your name
17 for the record?

18 A. My name is Toner Mitchell.

19 Q. And, Mr. Mitchell, what is your educational
20 background?

21 A. I have a bachelor of arts from Williams
22 College and a master's in fine arts from St. Mary's
23 College.

24 Q. Thank you.

25 And, Mr. Mitchell, will you please describe

1 your work experience?

2 A. My work experience ranges from an
3 environmental science -- scientist working on hazardous
4 waste sites, fishing guide, and currently I work with
5 Trout Unlimited in a conservation capacity.

6 Q. Thank you.

7 And is Petitioners' Exhibit 14 an accurate
8 copy of your resume?

9 A. Yes, it is.

10 Q. And, Mr. Mitchell, you prepared testimony for
11 this proceeding which is Exhibit 13; is that correct?

12 A. Yes.

13 Q. And is your testimony accurate to the best of
14 your knowledge?

15 A. It is.

16 Q. And are you willing to confirm today that you
17 will adopt your testimony under full -- under oath?

18 A. Yes.

19 Q. Thank you.

20 Mr. Mitchell has prepared a short summary of
21 his testimony.

22 And so please proceed with your presentation,
23 Mr. Mitchell.

24 MR. MITCHELL: Thank you very much.

25 And thank you to the Hearing Officer and

1 Members of the Commission.

2 I -- since my testimony is going to be entered
3 already, I would like to put some finer points on -- on
4 some of the things that I mention in that testimony,
5 instead of reading it verbatim.

6 I wanted to put some finer points on the
7 economic value of the Pecos watershed, and I think it's
8 important to understand -- and this -- for this I'm
9 wearing my fishing guide hat. I've guided the Pecos for
10 many years and as a manager of a fly fishing business in
11 Santa Fe.

12 I think it's important to understand that in
13 addition to the economic value to the communities in the
14 Pecos watershed itself, that the economic value to
15 adjacent communities like Santa Fe and Albuquerque, very
16 urban communities, the value of the Pecos to those
17 communities is extremely significant in that the
18 activity generated on fishing in the Pecos result in
19 hotel sales, restaurant reservations. Businesses might
20 locate conferences in those towns. There are real
21 estate values to those communities, as well. So it's
22 very important that the economic value of the Pecos
23 ripples out. It also ripples statewide.

24 My fishing business, I think on an annual
25 basis we would sell tens of thousands of dollars in

1 fishing licenses to mainly out-of-state visitors. And
2 thus that money would go to the state Game and Fish
3 Department which had the ability to leverage those
4 license revenues on a federal level many times three --
5 three times over.

6 So the value of the Pecos River in terms of
7 drawing in revenue to the state for many, many different
8 uses cannot be overestimated, and it also is a great
9 reason to protect the stream in any way possible,
10 protect the watershed.

11 The second emphasis I would like to raise is
12 there's been -- and this is as a water and a habitat
13 director for Trout Unlimited. Many times we've heard
14 the mention of the Rio Grande cutthroat trout. That is
15 the New Mexico State fish. And as Commissioner Patten
16 mentioned, there are lots of efforts to restore that
17 fish to its former standing.

18 Right now the fish is not endangered, but
19 there -- the necessity of recovering it is mainly to
20 ensure that it won't become endangered federally.
21 Federally endangered species require certain changes in
22 land use which would be a threat to the economic and
23 recreational value of the Pecos.

24 Also with regard to the cutthroat trout, it
25 needs to be mentioned that there is a strain of this

1 fish that is absolutely unique to the Pecos watershed,
2 further warranting its protection as an outstanding
3 natural resource water.

4 And finally, much has been said about the
5 recreational -- heavy recreational use on the Pecos as
6 kind of, you know, supporting an economy and such. I --
7 from Trout Unlimited perspective, we also recognize this
8 heavy recreational use as a potential threat to the
9 quality and function of this river. Therefore, the
10 outstanding natural resource designation is completely
11 appropriate to -- to this river, its watershed under
12 these conditions.

13 And with that, I will end my presentation.

14 MS. NOKES: Thank you, Mr. Mitchell.

15 That will conclude Mr. Mitchell's direct
16 testimony, and he will now stand for questions --
17 cross-examination from the parties and questions from
18 the Commissioners.

19 HEARING OFFICER CHAKALIAN: Is there a party
20 that wishes to cross-examine this witness?

21 MR. VERHEUL: No questions from the
22 Environment Department, Mr. Hearing Officer.

23 Thank you, Mr. Mitchell.

24 MR. MC QUILLAN: Mr. Hearing Officer, I have
25 no questions. Thank you.

1 HEARING OFFICER CHAKALIAN: Is there a
2 Commissioner that wishes to cross-examine this witness?

3 Is there a member of the public that wishes to
4 cross-examine this witness?

5 MS. MC FERRIN: Yes. This is Lela McFerrin
6 with UPWA.

7 I just wanted to comment on a couple of
8 things --

9 HEARING OFFICER CHAKALIAN: Okay. Hold on one
10 second.

11 MS. MC FERRIN: Sure.

12 HEARING OFFICER CHAKALIAN: You were a witness
13 earlier, weren't you?

14 MS. MC FERRIN: That's correct.

15 HEARING OFFICER CHAKALIAN: Okay. So this --
16 at this time we're taking cross-examination from the
17 public. It's not --

18 MS. MC FERRIN: Okay.

19 HEARING OFFICER CHAKALIAN: -- an opportunity
20 to further testify.

21 MS. MC FERRIN: No. It was comments to what
22 has been testified to.

23 HEARING OFFICER CHAKALIAN: Well, we're not --

24 MS. MC FERRIN: I could definitely --

25 (Simultaneous speaking.)

1 HEARING OFFICER CHAKALIAN: Ms. McFerrin, this
2 is an opportunity -- Ms. McFerrin, let me be specific.
3 Cross-examination is very specific. It's questions
4 based on the subject matter that was just testified to
5 or, in this case, entered as prefiled technical
6 testimony in full written terms.

7 So if you have a question, but not an
8 opportunity --

9 MS. MC FERRIN: No.

10 HEARING OFFICER CHAKALIAN: -- to testify.

11 No. Okay.

12 MS. MC FERRIN: No.

13 HEARING OFFICER CHAKALIAN: Thank you, ma'am.

14 MS. MC FERRIN: It was strictly a public
15 comment, but it can wait for the more appropriate time.
16 Thank you --

17 HEARING OFFICER CHAKALIAN: Okay. Thank you.

18 MS. MC FERRIN: -- Mr. Hearing Officer.

19 HEARING OFFICER CHAKALIAN: We do have public
20 comment coming up at noon. So there's no reason why you
21 couldn't make a public comment.

22 MS. MC FERRIN: Thank you.

23 HEARING OFFICER CHAKALIAN: Are there any
24 members of the public who wish to cross-examine this
25 witness?

1 No.

2 Ms. Nokes, may this witness be excused?

3 MS. NOKES: Yes. Thank you, Mr. Hearing
4 Officer.

5 HEARING OFFICER CHAKALIAN: All right. It's
6 11:54. And I would like to check in with Ms. Jones
7 again.

8 Have any members of the public signed up to
9 make comment?

10 MS. JONES: No, they have not, although
11 Ms. McFerrin might want to make her comment at the
12 appropriate time.

13 HEARING OFFICER CHAKALIAN: She may.

14 And, Ms. McFerrin, if you want to use the chat
15 feature below to send the host a message, you're more
16 than welcome to.

17 MS. MC FERRIN: I will be glad to do that.
18 Thank you.

19 HEARING OFFICER CHAKALIAN: Okay.

20 Well, Ms. McFerrin, we don't need to stand on
21 ceremony. Would you like to make a public comment at
22 this time?

23 MS. MC FERRIN: Yes, I would. Thank you,
24 Mr. Hearing Officer.

25 HEARING OFFICER CHAKALIAN: Okay.

1 Would you spell your name for the court
2 reporter.

3 MS. MC FERRIN: Of course. Lela is L-E-L-A,
4 last name McFerrin, M-C-F-E-R-R-I-N.

5 HEARING OFFICER CHAKALIAN: And, Ms. McFerrin,
6 were you sworn in earlier?

7 MS. MC FERRIN: Yes, I was.

8 HEARING OFFICER CHAKALIAN: Okay.

9 Ms. McFerrin, you have up to five minutes, and
10 your comment should be general and nontechnical in
11 nature.

12 Please proceed.

13 MS. MC FERRIN: Okay.

14 LELA MC FERRIN

15 having been first duly sworn or affirmed, gave
16 public comment as follows:

17 PUBLIC COMMENT

18 MS. MC FERRIN: The first is to Ms. Jones, to
19 Pamela.

20 Pam, there are two of our UPWA board members
21 who would like to make public comments, and we obviously
22 didn't realize that we had to register that with you.
23 So I am now registering Dr. Jennifer Lindline and Carol
24 Johnson to make public comments either today at noon or
25 today at 5 o'clock, depending on their schedule. And I

1 see Dr. Lindline has joined the hearing so she is
2 available.

3 MS. JONES: Thank you.

4 MS. MC FERRIN: The next one was on the -- I'm
5 sorry?

6 MS. JONES: I just said thank you. I've noted
7 the name.

8 MS. MC FERRIN: Thank you.

9 On the issue of restoration projects being
10 short-term degradation and allowed under the ONRW
11 designation, that is what UPWA does. And I can tell
12 you -- and thank the agencies involved, starting with
13 the Forest Service, the Surface Water Quality Bureau,
14 Environment Department, who actually give us those
15 grants -- on how strict they manage the health and
16 safety and quality water issues, water quality issues,
17 when we do projects.

18 They are on top of it from the time we get the
19 grant, we meet with them, we meet with them prior to
20 construction, we meet with them after -- during and
21 after construction, and then we monitor that area for
22 two years. So they are doing a hell of a job.

23 The other one is on the Rio Grande cutthroat
24 trout, our native fish. We have watched over the
25 last -- especially the last five to 10 years Game and

1 Fish doing a superb job on bringing back that strain,
2 and the Pecos strain being worked on at the fish
3 hatchery here in Pecos, the Lisboa Springs Fish
4 Hatchery.

5 And I'd just like to give a shout out to Kirk
6 Patten, his crew, Game and Fish, Environment Department,
7 for what they do. They also work with our
8 (unintelligible and/or inaudible) on river stewards
9 grants and -- by the state Environment Department. We
10 have three of those going now. And again the oversight
11 and the administration of those grant projects are
12 impeccable. So just another shout out to them.

13 And that's all I have to say.

14 Thank you, Mr. Hearing Officer, and thank you,
15 Commissioners and Madam Chairman.

16 HEARING OFFICER CHAKALIAN: Thank you.

17 So once again I'd like to announce that if
18 anyone would like to make public comment, there is a
19 chat feature at the bottom of the screen on the right.
20 It says Chat. Just click on it and send the host,
21 Pamela Jones, your name, your affiliation if there is
22 one, and we will put you on a list to make a public
23 comment.

24 Ms. Jones, who is the next public commenter?

25 MS. JONES: Jennifer Lindline.

1 MS. LINDLINE: Hello.

2 HEARING OFFICER CHAKALIAN: If you want to
3 make a public comment, Ms. Lindline, please turn on your
4 camera so you can be sworn in.

5 MS. LINDLINE: It is on.

6 HEARING OFFICER CHAKALIAN: Maybe your --

7 MS. LINDLINE: Oh, okay. Here we go. Yes.
8 Okay.

9 HEARING OFFICER CHAKALIAN: There we go.

10 Ms. Arreguin, would you swear in Ms. Lindline
11 after she spells her name.

12 THE REPORTER: Yes. Ms. --

13 MS. LINDLINE: My name is Jennifer Lindline,
14 L-I-N-D-L-I-N-E.

15 JENNIFER LINDLINE

16 having been first duly sworn or affirmed, gave
17 public comment as follows:

18 PUBLIC COMMENT

19 HEARING OFFICER CHAKALIAN: Please proceed.

20 MS. LINDLINE: Hello.

21 Thank you for this opportunity to speak -- to
22 speak to the group today.

23 My name is Jennifer Lindline. I am a 23-year
24 resident in New Mexico, a 20-year resident in Pecos, New
25 Mexico. Can't call myself a native, but I think I can

1 call myself a local.

2 My husband and I were drawn to this state and
3 especially drawn to Pecos because of its just incredible
4 beauty. We chose to buy our first home, our only home,
5 and raise our daughters in Pecos, New Mexico, largely
6 because of the river, its beauty, its just natural
7 wonders. It's one of the most beautiful and most
8 special places that Bill and I were ever blessed to
9 visit.

10 The sounds along the Pecos River, the sounds
11 of water flowing, of Aspen quaking in the fall, and of
12 birds singing, it just brings joy to my heart. The
13 smells of the wet earth, of the pine forests and just of
14 the spring waters lift my spirits. And then just all
15 the sites, the rocky landscapes, the pine forests, all
16 of the colors, it just soothes my soul.

17 We raised our daughters who are now 15 and 18
18 in Pecos and spent all of our weekends, all of our
19 breaks along the river's banks or along the hiking
20 trails. We spend every Mother's Day under a tree,
21 opening presents, enjoying each other, and just
22 communing with nature and being a family.

23 My daughters worked the fields with Mr. Vigil,
24 who I understand testified a little earlier, at Molino
25 de la Isla Organics, picking lettuce, helping with the

1 irrigation lines, and just in -- and learning the ins
2 and outs of an organic farm.

3 I am a board member with the Upper Pecos
4 Watershed Association, and I'm also a geology professor
5 in the natural resources management department at New
6 Mexico Highlands University. I regularly bring students
7 up the canyon to experience and learn about the area's
8 geologic history and its natural history.

9 Recently I mentored two (unintelligible and/or
10 inaudible) 13-month water quality study of the Upper
11 Pecos River, both of whom were from the Dine -- the Dine
12 tribe. They just were so impressed by the area. It
13 confirmed their aspirations to achieve an environmental
14 geology degree, and both are continuing to pursue
15 master's degrees so that they can practice being water
16 resources scientists and protectors of our state's
17 waters.

18 I just implore the decision-makers here today
19 that the Upper Pecos river deserves -- it demands
20 protections against degradations and the designation
21 that we seek.

22 Thank you.

23 HEARING OFFICER CHAKALIAN: Ms. Jones, do we
24 have anyone else?

25 MS. JONES: Yes, sir. Carol Johnson.

1 HEARING OFFICER CHAKALIAN: Ms. Johnson?

2 Let's come back to Ms. Johnson. I don't see
3 her.

4 MS. JONES: She -- she's on.

5 HEARING OFFICER CHAKALIAN: She is?

6 MS. JONES: Yes, sir.

7 Ms. Johnson, could you turn your camera on,
8 please?

9 MS. JOHNSON: I'm not sure how to do that.
10 I'm very, very sorry. It is not coming on.

11 HEARING OFFICER CHAKALIAN: Okay.

12 Ms. Johnson, we'll come back to you. You'll be our next
13 public commenter, and when you do manage to figure out
14 your camera, just use the chat feature, and as soon as
15 we get a break in the testimony, we'll bring you back on
16 for your public comment.

17 Okay. Ms. Nokes, it's my understanding that
18 seven of your --

19 MS. JOHNSON: I'm on.

20 HEARING OFFICER CHAKALIAN: Ms. Johnson, hold
21 on just a moment. Okay?

22 MS. JOHNSON: Yeah.

23 HEARING OFFICER CHAKALIAN: Ms. Nokes, it's my
24 understanding that seven of your nine witnesses have
25 testified so far.

1 MS. NOKES: That is correct.

2 HEARING OFFICER CHAKALIAN: When do you
3 anticipate the witness Garcia and Propst will be
4 available this afternoon?

5 MS. NOKES: They should be ready by 1:00 p.m.
6 this afternoon.

7 HEARING OFFICER CHAKALIAN: Okay. All right.
8 Thank you.

9 Before we turn to the Environment Department
10 and their witnesses, Ms. Johnson, please spell your name
11 and be sworn in.

12 MS. JOHNSON: Thank you.

13 Carol Johnson, J-O-H-N-S-O-N.

14 CAROL JOHNSON

15 having been first duly sworn or affirmed, gave
16 public comment as follows:

17 PUBLIC COMMENT

18 HEARING OFFICER CHAKALIAN: Please proceed.

19 MS. JOHNSON: Okay.

20 Begin?

21 HEARING OFFICER CHAKALIAN: Please proceed.

22 MS. JOHNSON: I, too, moved here 26 years ago
23 to Glorieta because of the Pecos River, the watershed
24 and the wilderness.

25 Excuse me?

1 Can you hear me?

2 HEARING OFFICER CHAKALIAN: (Nods head.)

3 MS. JOHNSON: I can't hear you.

4 THE REPORTER: We can hear you.

5 MS. JOHNSON: Oh, okay.

6 So the Pecos River has been a treasure to
7 indigenous and local people for centuries. It is time
8 for us to be part of the ONRW and to protect its waters
9 from pollution which is increasingly threatening its
10 water and the watershed. We believe that the ONRW was
11 intended to provide this protection.

12 The river is critical not only to the Village
13 of Pecos for farming, for vibrant tourism and recreation
14 like fishing, hunting, hiking, family enjoyment,
15 horseback riding and many more. It is valued by the
16 entire State of New Mexico and across the entire United
17 States.

18 It is important that New Mexico as a
19 water-poor state, second only to Nevada in the amount of
20 moisture we get every year -- we must protect and
21 preserve the rivers that we have and the wildlife and
22 the people who depend on it.

23 Rivers across our country are damned and
24 polluted. People are using more water than rivers can
25 provide, while some communities don't even have clean

1 access to water. But the most -- most important threat
2 of all, climate change, is putting the places that make
3 us happy and our health at risk.

4 In short, rivers are essential for wildlife
5 and people, and in this time of climate change we must
6 keep our rivers alive and clean.

7 Thank you.

8 HEARING OFFICER CHAKALIAN: Do we have a
9 Ms. Tiffany Rivera who wishes to make a public comment?

10 MS. RIVERA: Sir, I am on the line.

11 Can you hear me?

12 HEARING OFFICER CHAKALIAN: Yes.

13 But are you able to turn on your camera?

14 Ah, there you are.

15 Would you spell your name, please?

16 MS. RIVERA: Yes. My first name is Tiffany,
17 T-I-F-F-A-N-Y, last name Rivera, R-I-V-E-R-A.

18 HEARING OFFICER CHAKALIAN: Ms. Arreguin?

19 TIFFANY RIVERA

20 having been first duly sworn or affirmed, gave
21 public comment as follows:

22 PUBLIC COMMENT

23 HEARING OFFICER CHAKALIAN: Please proceed.

24 MS. RIVERA: Thank you.

25 I come before you all this afternoon on behalf

1 of New Mexico Farm and Livestock Bureau. We are the
2 largest agricultural organization in the state,
3 representing over more than 20,000 members involved in
4 agriculture, including components of dairy, livestock,
5 fruits and vegetables. We are a grassroots organization
6 which represents the interests of our members
7 specifically at the local, state and national level.

8 This afternoon we respectfully oppose the
9 proposal submitted by the petitioners to designate
10 portions of the Pecos River as an outstanding national
11 water resource. New Mexico Farm and Livestock Bureau
12 adamantly opposes these designations as they have the
13 potential to severely limit economic growth while also
14 placing additional restrictions and regulations on water
15 and land use.

16 In a state as dry and arid as New Mexico,
17 continued access and use of our water and land is
18 imperative.

19 And additionally, we oppose the proposal as it
20 includes designated segments located on private land.
21 New Mexico Farm and Livestock Bureau is an adamant
22 supporter of an individual's private property rights,
23 and this proposal has the potential to infringe on those
24 rights.

25 I did also submit our full comment to

1 Mrs. Pamela Jones through the e-mail option, as well, so
2 the Commissioners may find the full comment there.

3 Thank you.

4 HEARING OFFICER CHAKALIAN: Thank you.

5 Okay. Ms. Jones?

6 MS. JONES: No one else at this point,
7 Mr. Hearing Officer.

8 HEARING OFFICER CHAKALIAN: Thank you.

9 Okay. Now we turn to Mr. Verheul.

10 MR. VERHEUL: Yes, Mr. Hearing Officer.

11 Would you like me to proceed with an opening
12 statement and examination of witnesses?

13 HEARING OFFICER CHAKALIAN: I would. Thank
14 you.

15 MR. VERHEUL: Very briefly, the New Mexico
16 Environment Department is a stakeholder in any
17 rulemaking involving the standards and regulations in
18 20.6.4 New Mexico Administrative Code, and that's why
19 we've entered an appearance in this proceeding and are
20 participating today.

21 Two of our staff members from our standards
22 team have been working collaboratively with the
23 petitioners, as Ms. Nokes noted in her opening
24 statement, in order to further refine and improve this
25 petition to the point where the Environment Department

1 is hopeful that the Commission chooses to, in fact,
2 designate the waters that were nominated as Outstanding
3 National Resource Waters.

4 With that said, Mr. Hearing Officer, I have
5 one preliminary request before I call my first witness.

6 Given the technical complexity of the
7 testimony of both of my witnesses, I'm requesting that
8 they be able to each provide a summary of their direct
9 testimony and then sit as a panel for cross-examination.

10 HEARING OFFICER CHAKALIAN: By all means.

11 MR. VERHEUL: Thank you, Mr. Hearing Officer.

12 With that, the New Mexico Environment
13 Department calls Jennifer Fullam.

14 HEARING OFFICER CHAKALIAN: And, Mr. Verheul,
15 would you remind me, are both of your witnesses sworn
16 in?

17 MR. VERHEUL: They are, Mr. Hearing Officer.

18 HEARING OFFICER CHAKALIAN: Okay. Thank you.

19 JENNIFER FULLAM

20 having been first duly sworn or affirmed, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. VERHEUL:

24 Q. Good afternoon, Ms. Fullam.

25 Please state your name.

1 A. Jennifer Fullam.

2 Q. What is your current position?

3 A. I'm an environmental scientist supervisor,
4 serving as the water quality standards coordinator with
5 the New Mexico Environment Department Surface Water
6 Quality Bureau.

7 Q. How long have you held this position?

8 A. I've been the water quality standards
9 coordinator for five years.

10 Q. And what are your duties in this position?

11 A. As a standards coordinator I oversee and
12 facilitate the Department's team responsible for
13 proposing amendments to the state's surface water
14 quality standards, as well as participating in hearings
15 related to any proposed amendments initiated by parties
16 other than the Department.

17 Q. Would you please summarize your posthigh
18 school education?

19 A. Yeah. I have a bachelor of science degree in
20 biology with a minor in geography from the University of
21 New Mexico and a master of science degree in
22 environmental science and management from New Mexico
23 Highlands University.

24 Q. Do you hold any certifications, or do you have
25 any other professional training that's relevant to this

1 proceeding?

2 A. Yes. I have received training and obtained
3 various certifications applicable to both my position
4 and more specifically to this proceeding.

5 A whole list of my training and certifications
6 can be found in my resume filed as NMED Exhibit 3.

7 Q. Can you tell us about your work experience
8 that's relevant to this ONRW proceeding before the
9 Commission?

10 A. I can. I have testified and filed amended
11 rules in one tribal and four state water quality
12 standard rulemaking hearings. This included the 2005
13 Triennial Review of Tesuque Pueblo's water quality
14 standards, state-designated use amendments for Dog
15 Canyon, Tecolote Creek, San Isidro Arroyo and
16 tributaries to San Isidro Arroyo, and the state's first
17 discharger-specific temporary standard for Doggett Creek
18 and the City of Raton wastewater treatment plant, and
19 then most recently (unintelligible and/or inaudible).

20 THE REPORTER: Excuse me. You cut out a
21 little bit. The last sentence, please?

22 MS. FULLAM: Let's see. I'll start off
23 with --

24 THE REPORTER: "And then most recently."

25 MS. FULLAM: And then most recently the

1 Triennial Review of New Mexico's water quality
2 standards.

3 THE REPORTER: Thank you.

4 Q. (BY MR. VERHEUL) Ms. Fullam, have you
5 reviewed the petition and direct -- direct technical
6 testimony filed by petitioners and filed by Dennis
7 McQuillan?

8 A. Yes.

9 Q. Did you submit technical testimony in this
10 matter?

11 A. Yes. My direct technical testimony was filed
12 as NMED Exhibit 1.

13 Q. Do you have any changes or corrections to that
14 testimony?

15 A. No.

16 Q. Do you adopt that prefiled written technical
17 testimony here today?

18 A. I do.

19 Q. Can you briefly describe the proposed
20 amendments to the state's standards for interstate and
21 intrastate surface waters that are being considered here
22 today?

23 A. Yeah. The proposed amendments if adopted
24 would designate certain identified ephemeral,
25 intermittent and perennial waters, including wetlands

1 within the Upper Pecos watershed from Dalton Creek day
2 use area upstream to the wilderness boundary as
3 Outstanding National Resource Waters, or otherwise
4 referred to as ONRWs.

5 Q. Can you tell us what an ONRW is?

6 A. An ONRW is a designation for a water of the
7 state in which the highest level of antidegradation
8 protection applies.

9 Q. Can any water be designated as an ONRW?

10 A. No. For a water to be adopted as an ONRW, the
11 Commission must determine whether the petitioners
12 demonstrated that the designation would be, one,
13 beneficial to the state, and that the nominated water
14 body meets one of those eligibility criteria codified in
15 20.6.4.9B NMAC.

16 Q. So what protections are afforded to ONRWs?

17 A. Under the state's antidegradation policy in
18 20.6.4.8 NMAC, no degradation of water quality is
19 permitted for a water designated as an ONRW.

20 Q. Does the designation of a water as an ONRW
21 change the water quality standards for that particular
22 surface water?

23 A. No. The act of designating a water of the
24 state as an ONRW doesn't change the designated uses or
25 the criteria. The designation of an ONRW only changes

1 the water quality protections under the state's
2 antidegradation policy.

3 Q. Can you explain the state's antidegradation
4 policy?

5 A. Yeah. The antidegradation policy is found in
6 20.6.4.8 NMAC, consists of three tiers of protection.

7 Tier one is applicable to all waters of the
8 state and ensures that existing uses and the level of
9 water quality necessary to protect those existing uses
10 are maintained and protected.

11 Tier two protects and maintains high-quality
12 waters by prohibiting any lowering of water quality
13 unless it's determined to be important for economic or
14 social needs in the area in which the water is located.

15 Tier three is the most protective tier, and
16 that prohibits degradation in ONRWs, except for
17 specifically defying time-sensitive activities, such as
18 activities that restore or maintain water quality or
19 activities deemed necessary to accommodate public health
20 or safety.

21 Q. So if the antidegradation policy prohibits
22 designated use (unintelligible and/or inaudible)?

23 THE REPORTER: Excuse me. Would you please
24 repeat the question. I lost your volume.

25 MR. VERHEUL: I apologize.

1 Q. If the antidegradation policy prohibits the
2 degradation of waters designated as ONRWs, are there any
3 activities permitted on or near an ONRW?

4 A. Yes. There are several potential activities
5 that are allowed on or near ONRWs with certain
6 constraints. If it's demonstrated that the activity
7 will not cause degradation to a surface water quality of
8 the ONRW, then the activity is completely permissible.

9 On the other hand, activities that may cause
10 degradation of ONRWs, those need further evaluation and
11 administrative consideration which is described in
12 20.6.4.8A.(3) and (4) NMAC. So these activities include
13 those associated with public health and safety and
14 emergency response, acequia operation, maintenance and
15 repair, and preexisting activities, and activities
16 associated with the restoration of the chemical,
17 physical and biological integrity of the water.

18 Q. Once adopted, can an ONRW designation be
19 removed?

20 A. Well, ONRWs are codified on 20.6.4 NMAC, and
21 today New Mexico has not removed any ONRW designations,
22 and it would be unlikely for this to happen in the
23 future. But if it were to be considered, it would have
24 to be done through a rulemaking action before the --
25 before this Commission and subsequently approved by EPA.

1 So as provided in Section 74-6-4D of the
2 state's Water Quality Act, New Mexico legislature
3 designated the authority to the Commission to, quote,
4 adopt water quality standards for surface and
5 groundwaters of the state based on credible scientific
6 data and other evidence appropriate under the Water
7 Quality Act.

8 Therefore, amending water quality standards to
9 be less protective, as would be the case in reducing
10 antidegradation policy requirements for an ONRW, that
11 would require significant reasoning based on sound
12 evidence. So although it's not prohibited anywhere in
13 the federal or state regulations, it would be
14 challenging to demonstrate that an ONRW designation
15 should be removed.

16 Q. And is designating waters as ONRWs -- is that
17 supportive of the goals of the federal Clean Water Act?

18 A. Yes. It's in line with the goals and
19 objectives of the Clean Water Act to restore, maintain
20 and protect water quality wherever attainable. So
21 ultimate goal of the act is to bring the water quality
22 of all waters of the US to their highest attainable use.
23 And the designating waters as ONRWs, that's one tool
24 that we can work -- that we can use to work towards that
25 goal.

1 Q. Thank you.

2 I want to move along just briefly to the
3 administrative process required here in order for these
4 waters to be designated.

5 Does the Department consider itself a
6 stakeholder in this matter?

7 A. Yes. The Department considers itself a
8 stakeholder in this matter based on the Department's
9 responsibility for implementing the state's water
10 quality standards. The Department also considers EPA a
11 stakeholder, as well, since it's EPA's obligation to
12 ensure the state's water quality standards are adopted
13 in accordance with the Clean Water Act.

14 Q. And has there been contact or communication
15 between the petitioners here today and the Environment
16 Department concerning this nomination?

17 A. Yes. The petitioners have been in contact
18 with the Department during the development of their
19 petition and in preparation of the hearing.

20 Q. And what are the notice requirements for this
21 rulemaking hearing?

22 A. Well, in accordance with 20.1.6.201 NMAC, the
23 petitioner must publish the hearing notice in the state
24 register and in a newspaper of general circulation in
25 the area affected at least 60 days prior to the hearing.

1 In addition to these requirements, there are also public
2 notification requirements found in 40 CFR 25.5 and in
3 Chapter 14 Article 4 of the State Rules Act.

4 I reference the relative citations for public
5 noticing in my direct technical testimony which was
6 filed as NMED Exhibit 1.

7 Q. For this particular rulemaking proceeding, who
8 provided the public notice?

9 A. Well, as outlined in the Hearing Officer's
10 scheduling order issued on December 13th, 2021, the
11 Department provided the public hearing notice for this
12 matter.

13 Q. And can you describe the actions that the
14 Department took?

15 Ms. Fullam, can you hear me?

16 Mr. Hearing Officer, can you hear me?

17 HEARING OFFICER CHAKALIAN: (Nods head.)

18 MR. VERHEUL: Okay.

19 Q. Ms. Fullam, I don't know if you can hear me.
20 You are frozen on the screen.

21 Can you hear me now?

22 A. Ah.

23 Q. Okay. I'm going to --

24 A. I can hear you now.

25 Q. Okay. Thank you.

1 I'm going to go back and reask the question
2 that I just asked. I don't know if you were speaking,
3 but we didn't hear any answer at all. So I'm just going
4 to reask it.

5 With respect to providing public notice for
6 this hearing, can you describe the actions that the
7 Department took?

8 A. Yes. As required in 20.1.6.201A, the hearing
9 notice must be published in the state register, a
10 newspaper of general circulation and a newspaper of
11 local circulation no less than 60 days prior to the
12 hearing.

13 Can you still hear me?

14 Q. Yes.

15 A. Good.

16 For this matter, that date was February 11,
17 2022.

18 In addition to the requirements in 20.1.6.201A
19 NMAC the Department also provided notice to the public
20 at least 30 days prior to the hearing in accordance with
21 Section 14-4-5.2 of the State Rules Act.

22 As detailed in my technical testimony, the
23 Department published the hearing notice in English and
24 Spanish in the state register, the Las Vegas Optic, the
25 Albuquerque Journal, all prior to that 60-day hearing

1 requirement.

2 In addition, the Department provided
3 notification to the agency's district managers, posted
4 the notice in several places on the Department's web
5 page, e-mailed the notice to 1,901 individuals
6 subscribed to the Surface Water Quality Bureau's e-mail
7 distribution list, posted the notice on the Sunshine
8 Portal and provided the notice to the Legislative
9 Council Service.

10 And that finally, in accordance with
11 Section 14-4A-4, the Small Business Regulatory Relief
12 Act, the Department's tribal communication and
13 collaboration policy, the Department provided the
14 notification of the proposed amendments to the Small
15 Business Regulatory Advisory Commission and tribal
16 representatives.

17 Q. So did the Department fulfill the regulatory
18 requirements associated with this rulemaking?

19 A. To the best of my knowledge, yes.

20 Q. And did the Department file its notice of
21 intent to present technical testimony as -- as ordered
22 to in the Hearing Officer's scheduling order?

23 A. Yes. The Department filed its notice of
24 intent to present technical testimony which included
25 direct written testimony and supporting exhibits on

1 March 10th, 2022.

2 Q. And how long does the administrative process
3 take from the point -- assuming that they do, from the
4 point where the Commission decides to designate these
5 waters to the point where any changes to the rule would
6 become effective for the purposes of the federal Clean
7 Water Act?

8 A. The administrative process following the
9 Commission's final order and statement of reasons, that
10 takes about six months. The process usually -- it
11 includes filing with State Records Center and Archives
12 and then submitting it to EPA for approval.

13 The rule becomes effective for state purposes
14 under the New Mexico Water Quality Act once the
15 designations are codified in 20.6.4 NMAC, which is
16 typically within two months from the Commission's final
17 statement of reasons and approval order. The rule
18 becomes effective for purposes of the Clean Water Act on
19 EPA's approval date which comes after that.

20 Q. The proposed amendments to 20.6.4, which were
21 filed as NMED Exhibit 36 and Petitioners' Exhibit 1,
22 identify a document titled Maps and Lists for Unnamed
23 Tributaries to Perennial Waters and Wetlands in the
24 Headwaters Pecos River Watershed.

25 Has this document been created and filed with

1 the state library?

2 A. No. The Department will create the document
3 to reflect the WQCC's determination should some or all
4 of these waters be adopted as ONRWs, and then we'll file
5 it with the state library.

6 Q. Those two exhibits I just referenced, the
7 Department's Exhibit 36 and Petitioners' Exhibit 1,
8 those were both the proposed amendments to 20.6.4 NMAC.

9 Are those the same, to the best of your
10 knowledge?

11 A. Yes.

12 Q. Does the Department fully support the
13 designation of the waters identified in the petition?

14 A. Yes.

15 MR. VERHEUL: Okay. Thank you, Ms. Fullam.

16 I have no further questions, and per the
17 Hearing Officer's allowing me to cross -- or to examine
18 both witnesses, at this time the Environment Department
19 calls Diana Aranda.

20 Let's see. There she is.

21 And, Mr. Hearing Officer, Mr. Aranda has been
22 sworn.

23

24

25

1 DIANA ARANDA

2 having been first duly sworn or affirmed, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. VERHEUL:

6 Q. Ms. Aranda, please state your name.

7 A. My name is Diana Aranda.

8 And can you hear me, everybody?

9 Q. I can hear you.

10 A. Perfect.

11 Q. What is your current position?

12 A. I am an environmental scientist advanced in
13 the Standards, Planning and Reporting Team for the New
14 Mexico Environment Department Surface Water Quality
15 Bureau.

16 Q. How long have you held this position?

17 A. I have been in this position for three years,
18 and I have been employed with the NMED Surface Water
19 Quality Bureau since February, 2017.

20 Q. And briefly, what are your duties in this
21 position?

22 A. I am responsible for developing water quality
23 standards for the New Mexico surface waters in
24 accordance to the state Water Quality Act and the
25 federal Clean Water Act. I write and review documents

1 for the development and revisions to the state surface
2 water quality standards for the Water Quality Control
3 Commission and the US Environmental Protection Agency's
4 approval process.

5 Q. Would you please summarize your education?

6 A. I hold a bachelor's of science degree in
7 biology from the University of New Mexico and a master
8 of science degree in coastal zone management from Nova
9 Southeastern University.

10 Q. What certifications and professional training
11 do you have that are relevant to this proceeding?

12 A. I have received certifications from EPA's
13 national Water Quality Standards Academy in EPA quality
14 project and project management. I have attended the
15 state's rulemaking training as well as their records and
16 information management training.

17 Q. And what professional experience do you have
18 that's relevant to this proceeding?

19 A. I have testified before the Water Quality
20 Control Commission regarding the Triennial Review of the
21 state standards for interstate and intrastate surface
22 waters, codified in 20.6.4 New Mexico Administrative
23 Code, otherwise referred as NMAC, and for the adoption
24 of total maximum daily loads.

25 I provided the details of my job duties in my

1 resume filed as NMED Exhibit 4.

2 Q. I'm sorry. Did you say Exhibit 4?

3 A. Exhibit 4.

4 Q. Great.

5 Have you reviewed the petition and also the
6 direct technical testimony as filed by the petitioners
7 and the testimony filed by Mr. McQuillan?

8 A. I had a hard time hearing you.

9 Q. Okay.

10 A. Can you repeat the question?

11 Q. I will repeat the question.

12 Have you reviewed the petition and the direct
13 technical testimony that was filed by the petitioners
14 and also the testimony filed by Mr. McQuillan in this
15 matter?

16 A. Yes.

17 Q. Okay.

18 And did you submit direct written technical
19 testimony for this matter?

20 A. Yes. My direct written technical testimony is
21 filed as NMED Exhibit 2.

22 Q. Do you have any changes or corrections to that
23 testimony?

24 A. I do not.

25 Q. Do you adopt that prefiled written testimony

1 here today?

2 A. Yes, I do.

3 Q. Okay.

4 And I know that -- I know that you filed -- or
5 exhibits were filed that were related to your written
6 testimony.

7 Would you summarize the nature of your
8 testimony here today?

9 A. I will summarize the Department's technical
10 review of the petitioners' proposal to amend 20.6.4.9B
11 to designate certain waters of the Upper Pecos as ONRWs.

12 So NMED's technical review evaluated each of
13 the nominated water bodies to ascertain the fulfillment
14 of eligibility criteria and the submittal elements
15 required for an ONRW designation in accordance to
16 20.6.4.9A and B NMAC, and the full details of this
17 technical review can be found in my direct written
18 technical testimony filed as NMED Exhibit 2.

19 Q. Okay. Well, let's talk a little bit more in
20 detail about the technical review.

21 Can you describe how you conducted that
22 technical review?

23 A. The Department examined the petition its in --
24 in its entirety. Then we completed a focus review to
25 ascertain whether the petition provided evidence and

1 documentation to satisfy the ONRW eligibility criteria
2 and submittal requirements for 20.6.4.9A and B NMAC for
3 each of the nominated water bodies.

4 Q. In your written direct testimony, you first
5 address the ONRW eligibility requirements in 20.6.4.9B
6 NMAC.

7 What was the rationale for starting with that?

8 A. Well, the Department first reviewed the
9 eligibility criteria in 20.6.4.9B NMAC because, if a
10 nominated water body does not meet the eligibility
11 criteria, then the water body would not qualify for an
12 ONRW designation, and NMED would not continue the review
13 of that water body under this ONRW nomination.

14 Q. Okay.

15 So what are the eligibility criteria in
16 20.6.4.9B?

17 A. So according to 20.6.4.9B NMAC, the Commission
18 may designate a surface water of the state as an ONRW if
19 the designation is beneficial to the state and it's
20 either, one, a significant attribute of the state,
21 special trout water, a national park, a state park or
22 monument, a national or state wildlife refuge, a
23 wilderness area or a designated Wild and Scenic River;
24 or, two, the water has exceptional recreational or
25 ecological significance; or, three, the water has

1 exceptional water quality and has not been significantly
2 altered in a way that detracts from its value as a
3 natural resource.

4 Q. Based on your review, did the petition
5 demonstrate that these water bill -- water bodies
6 fulfilled these eligibility criteria?

7 A. Yes. The petitioners demonstrated that
8 several waters identified in the petition met the ONRW
9 criterion for one or more of the significant attributes
10 identified in 20.6.4.9B.(1) NMAC, such as a special
11 trait -- special state trout water or a Wild and Scenic
12 River.

13 And although not specifically identified in
14 the petition, but mentioned in Mr. Adelo's and
15 Mr. McQuillan's direct written technical testimony, the
16 state designation of the Pecos Canyon State Park, which
17 includes several of the nominated tributaries, provides
18 another point of evidence for eligibility that is
19 pursuant to 20.6.4.9B.(1) NMAC.

20 And the petitioners also demonstrated that all
21 of the waters identified in the petition met eligibility
22 criterion for exceptional recreational or ecological
23 significance pursuant to 20.6.4.9B.(2) NMAC through the
24 New Mexico Department of Game and Fish data.

25 So therefore, NMED believes that the

1 petitioners provided sufficient evidence to demonstrate
2 that all the nominated water bodies fulfilled at least
3 one of the eligibility criteria for an ONRW designation
4 consistent with 20.6.4.9B NMAC, and Section IV of my
5 direct technical testimony describes further how this
6 Department -- how the Department verified the
7 eligibility criteria for the nominated water bodies.

8 Q. Okay. I'm going to ask you briefly about the
9 submittal elements in 20.6.4.9A NMAC.

10 Why is it important that an ONRW petition
11 include the elements that are -- that are contained in
12 that rule?

13 A. The submittal elements in 20.6.4.9A NMAC are
14 in place to identify the nominated waters' specific
15 boundaries, describe the nomination's scientific basis
16 and ensure the transparency to the public, stakeholders
17 and the Commission.

18 Q. And with respect to this matter, how did the
19 petition fulfill those submittal requirements?

20 A. The petitioners submitted all of the six
21 required elements for nominated waters as ONRWs.
22 Required elements include maps, evidence in support of
23 the nomination, water quality data, a discussion of
24 activities that might reduce water quality, a discussion
25 of the economic impact and an affidavit of notice of

1 publication.

2 And all of this is in Section V of my direct
3 written technical testimony that describes the
4 Department's verification of the submittal requirements
5 for the nominated water bodies.

6 Q. Okay.

7 So to sum up, did the Department find that the
8 petitioners fulfilled the submittal requirements in
9 20.6.4.9A and the eligibility criteria in 20.6.4.9B?

10 A. The Department found that all of the nominated
11 water bodies in the petition met at least one of the
12 eligibility criteria in 20.6.4.9B and that the
13 petitioners provided all of the submittal evidence in
14 20.6.4.9A NMAC.

15 Q. Okay. Well, Ms. Fullam has answered questions
16 as to whether or not Petitioners' Exhibit 1 and the
17 Department's Exhibit 36 are identical, and I think we
18 concluded that they are.

19 So just to sum up, does the Department support
20 this ONRW nomination?

21 A. Yes. The Department supports designating the
22 identified waters in Petitioners' Exhibit 1 as ONRWs.

23 MR. VERHEUL: Thank you, Ms. Aranda.

24 I have no further questions at this point.

25 I would like to bring back Ms. Fullam to stand

1 with Ms. Aranda for cross-examination as part of a
2 panel.

3 JENNIFER FULLAM and DIANA ARANDA
4 having been first previously sworn or affirmed,
5 were examined and testified further as follows:

6 HEARING OFFICER CHAKALIAN: Are there any
7 parties that wish to cross-examine these two witnesses?

8 MR. MC QUILLAN: Mr. Hearing Officer, I have
9 just a couple of quick questions.

10 HEARING OFFICER CHAKALIAN: So, Mr. McQuillan,
11 are you familiar with cross-examination?

12 MR. MC QUILLAN: Yes, I am, sir.

13 HEARING OFFICER CHAKALIAN: Okay. Good. Then
14 please proceed.

15 CROSS-EXAMINATION

16 BY MR. MC QUILLAN:

17 MR. MC QUILLAN: And this question is
18 addressed to the panel of experts with the Department.

19 The petitioners in Section III.H of their
20 petition describe the Upper Pecos watershed as one of
21 the state's highest quality and most valued surface
22 waters.

23 Does the Department agree with that
24 characterization?

25 MS. FULLAM: This is Jennifer.

1 Mr. McQuillan, could you rephrase that?

2 Sorry.

3 MR. MC QUILLAN: The petitioners describe the
4 Upper Pecos watershed in their petition as one of New
5 Mexico's highest quality and most valued surface waters,
6 and I was wondering if the Department agrees with that
7 characterization of the petitioners.

8 MS. FULLAM: Mr. McQuillan, that's -- that's a
9 good question.

10 I think the Department narrowed its scope of
11 evaluation to the less subjective elements of the
12 petition to make sure that it met that scientific basis
13 for the criteria. So it was a little bit beyond the
14 scope to go into the subjective opinions of -- of the
15 value and quality of the water on a professional level.

16 MR. MC QUILLAN: Okay. Thank you.

17 And earlier today we heard testimony about the
18 recreational economy of Pecos and indeed surrounding
19 areas.

20 And would you agree that the recreational
21 economy in, say, the Village of Pecos is evidence of the
22 exceptional recreational quality of the Upper Pecos
23 watershed?

24 MS. ARANDA: The petitioners submitted Fish
25 and Wildlife -- New Mexico Fish and Wildlife data for

1 angler use and special species. So the Department took
2 into consideration the angler data as evidence of kind
3 of -- as concrete evidence of recreational --
4 exceptional recreational use.

5 Did that answer your question?

6 MR. MC QUILLAN: I think it did. I was
7 getting -- I was following up on the question that
8 Commissioner Dominguez asked about how we define
9 exceptional value, and I was wondering if the Department
10 felt that the recreational economy of the Village of
11 Pecos, people making money off of recreation locally,
12 would be evidence of the exceptional value of the
13 recreation of the Upper Pecos watershed.

14 And I think you -- I think you answered the
15 question. If you'd like to add more, that would be
16 fine.

17 Mr. Hearing Officer, that -- that's all the
18 questions I have.

19 HEARING OFFICER CHAKALIAN: Okay. Thank you.

20 Ms. Nokes?

21 MS. NOKES: Thank you, Mr. Hearing Officer.

22 Petitioners have no questions and thank the Department
23 for their testimony in support of the nomination.

24 HEARING OFFICER CHAKALIAN: Are there any
25 Commissioners that have cross-examination questions for

1 these two witnesses?

2 EXAMINATION

3 BY THE COMMISSION:

4 HEARING OFFICER CHAKALIAN: Mr. Brancard?

5 COMMISSIONER BRANCARD: Yes. Thank you,
6 Mr. Hearing Officer.

7 I don't know whether the Department is the
8 best one to answer this question, but I notice that the
9 language that was used in the original petition for the
10 rule change that's proposed has seemed to have evolved
11 into language that's presented in the prehearing
12 statements of both parties, which may be the same
13 language. I don't know how that happened or what the
14 impact of it is. It does not -- I don't know that it
15 has any significant impact.

16 But if someone could walk us through why the
17 language changed, that would be helpful.

18 MS. FULLAM: Commissioner Brancard, are you
19 speaking to the language in NMAC that's now being
20 proposed?

21 COMMISSIONER BRANCARD: Yes.

22 MS. FULLAM: I -- I can hopefully add some
23 clarification to that.

24 The Department always tries to work with
25 petitioners when we're developing water quality

1 standards. There's some nuances with the language in
2 NMAC and just as with any other water quality standards
3 amendment. We both start off from a certain point, and
4 then we work towards something that can be approved. It
5 has to go through Records, as well. So -- and there's
6 some standardized formatting.

7 So you'll see that we always talk about water
8 bodies from the downstream portion to the upstream
9 portion. So there's been a little bit of tweaking of
10 the language itself just to be consistent with the rest
11 of the regulations. And as with all rulemakings, we try
12 to work with the petitioner to come to an agreeance on
13 what that language would be.

14 COMMISSIONER BRANCARD: So is it fair to say
15 that the proposal that exists now is an agreed
16 compromise between the Department and the petitioner --
17 or I don't know if compromise is the right word -- but
18 agreed language between the two parties; is that
19 correct?

20 MS. FULLAM: Commissioner Brancard, yes.

21 COMMISSIONER BRANCARD: Thank you.

22 Thank you.

23 HEARING OFFICER CHAKALIAN: Are there any
24 other -- Commissioner Dominguez?

25 COMMISSIONER DOMINGUEZ: Yes. Thank you,

1 Mr. Hearing Officer.

2 Good afternoon, Ms. Fullam and Ms. Aranda.

3 Thank you for your testimony.

4 Ms. Aranda, it's been covered in your written
5 testimony that there were certain stream segments that
6 did not have data available, and although it's not a
7 requirement for the designation for there to be data in
8 all of the segments.

9 So assuming we have some segments that haven't
10 been assessed and have no baseline, how -- how do we
11 determine degradation without that baseline data since
12 an ONRW does not allow degradation?

13 MS. ARANDA: Yes. Thank you. I would -- did
14 I wait until the end of your question?

15 COMMISSIONER DOMINGUEZ: Yes. Go ahead.

16 MS. ARANDA: Yes. Thank you, Commissioner
17 Dominguez.

18 That is a very, very important question,
19 because you do require a baseline in order to proceed
20 with any kind of measurement of degradation. And so my
21 understanding is that when there's not an assessment on
22 an ONRW river or waterway, that it's kind of on a
23 case-by-case scenario.

24 So I'm not -- it's not in my -- in my forte
25 to -- to talk about permits, but I think and -- and I

1 believe that there would have to be a requirement of
2 some kind of assessment at the time.

3 If Ms. Fullam would like to add to that
4 statement?

5 MS. FULLAM: Yes. Thank you, Ms. Aranda.

6 I think you summarized that well.

7 If there were to be a permit that wanted to
8 discharge -- and this is my understanding, and I'm the
9 standards coordinator, not the permitting part of the
10 branch.

11 It's my understanding that when somebody comes
12 in for a permit there needs to be an establishment of
13 what the water quality is, and as an ONRW we have that
14 no degradation clause for dischargers. And so that
15 would have to be established for any of those waters
16 that do not have any baseline water quality data, or
17 when we do monitoring, that may be a data point in which
18 we need to go collect data, depending on resources.

19 So there's several ways we can go about
20 filling that gap.

21 COMMISSIONER DOMINGUEZ: Okay. Thank you,
22 both, for -- for that answer.

23 So I'll turn to Ms. Fullam.

24 In your written testimony you've -- you've
25 alluded to other infrastructure services needs such as

1 water, sewer, utilities, such as that, that there's a
2 process established with -- within the antidegradation
3 policy that whoever might be implementing those
4 practices has to go through.

5 So could you give us a little bit of
6 perspective or elaboration on that?

7 MS. FULLAM: Thank you, Commissioner
8 Dominguez.

9 It's a good question.

10 It is outlined in 20.6.4.8 NMAC on what that
11 process is. And again as the standards coordinator I
12 don't oversee that process. I know that it exists. It
13 does require public noticing, and it does require the
14 Commission's approval for those fine, sensitive --
15 there's several different pockets of different
16 activities, and one of them for infrastructure would be
17 that it's needed for public health and safety, and so
18 that process is outlined in NMAC.

19 COMMISSIONER DOMINGUEZ: Okay. Thank you,
20 Ms. Fullam.

21 Let me turn to another area of your written
22 testimony. On page 8 you kind of elaborate a little bit
23 there about preexisting uses, and I would like to kind
24 of explore that a little bit. And I'll do my best to
25 ask questions as to not prompt an objection from

1 Mr. Verheul. So let's just give this a try.

2 So the -- if I'm correct, this -- this is the
3 first ONRW petition that encompassed any volume of
4 private property as where the other ONRWs that currently
5 exist pretty much are totally federal land or
6 combination there of other public land; is that correct?

7 MS. FULLAM: To my knowledge, yes.

8 COMMISSIONER DOMINGUEZ: So my focus is a
9 little bit on impacts to private property. So with the
10 preexisting use language that's in there -- and maybe
11 it's easier if I just use some examples and see if -- if
12 this gets the thought process down correctly.

13 So if I own land in that area and I've got
14 water rights and I currently have irrigated pasture and
15 I've got handful of cattle that I run on that irrigated
16 pasture, and I decide because of the amount of people
17 that come up through there that it would be more
18 profitable if I transition from running cattle to
19 putting in a you-pick farm there and still utilize my
20 water rights, now, the term "preexisting use," does that
21 apply to the fact that I have cattle grazing there, or
22 is it the fact that that land is assessed as
23 agricultural property and I have water rights to use on
24 that?

25 Give me -- help me wrap my head around this

1 preexisting use of land. And there was a question mark
2 at the end of that. So please proceed.

3 MS. FULLAM: Commissioner Dominguez, I -- I
4 hear that as a question. I was -- I was thinking.

5 You bring up a very important question, and I
6 just was now -- we do not have a definition for
7 preexisting uses. What it does say is that if it's a
8 preexisting use that is allowed under federal and state
9 law it may continue. I think we would be splitting
10 hairs. Although valid in action, I don't know that I
11 would be the one that can split that hair as to
12 preexisting, you know, beneficial use of your water
13 right or whether that can be changed from grazing to
14 farming, vice versa.

15 So I think it's beyond the scope of my ability
16 to differentiate the preexisting use clause that's in
17 our regulations. And there is no definition so I can't
18 elaborate further for that one.

19 COMMISSIONER DOMINGUEZ: Thank you for a good
20 shot at that.

21 MS. FULLAM: Thank you.

22 COMMISSIONER DOMINGUEZ: And I appreciate your
23 effort on that. I -- and maybe some of this discussion
24 is best suited for the deliberation aspect.

25 But I think it's an important factor because

1 it is the first time that we ventured in the private
2 property so I'd attach to an ONRW. And because of the
3 vagueness of that statement, I'm -- I'm trying to wrap
4 my head around whether there runs the potential of
5 winding up with a de facto deed restriction on that
6 private property because of the ONRW designation.

7 So I -- I realize this is probably outside
8 your expertise. I appreciate your efforts to entertain
9 my question.

10 And I think with that, that concludes my line
11 of questioning.

12 Thank you, Mr. Hearing Officer.

13 HEARING OFFICER CHAKALIAN: Thank you,
14 Commissioner Dominguez.

15 Chair Stringer?

16 CHAIR STRINGER: Thank you.

17 Good afternoon.

18 And thank you, both, for your testimony.

19 I'm not sure who my question should be
20 directed to.

21 But to build off the segments that
22 Commissioner Dominguez asked about that didn't have any
23 baseline data, according to the implementation plan, if
24 I understand it correctly, currently in our water
25 quality standards, before the Commission could approve

1 any temporary activities, a receiving water assessment
2 would need to be conducted.

3 Is that a correct statement?

4 Thereby limiting -- sorry. I'll just wrap
5 this up. Thereby limiting what the Commission could
6 approve if no baseline data existed, part of the
7 implementation process would require the baseline data
8 to be collected before the Commission took any action on
9 approving that temporary work.

10 MS. FULLAM: Chair Stringer --

11 And, Ms. Aranda, if you don't mind, I'll
12 start, and then Ms. Aranda can -- can follow up.

13 From what I'm reading in 20.6.4.8A.(3) NMAC,
14 for those temporary and short-term activities that would
15 cause degradation of water quality, it does say that the
16 degradation -- first it's using the term "degradation,"
17 and in order to understand that there's degradation, we
18 would need some sort of baseline to know that it may
19 cause the water quality to diminish. So I think that's
20 the active word in the regulations.

21 Degradation may not need to be quantitative.
22 It could be qualitative. And I don't know that the -- I
23 think that may be up to the Commission to determine
24 whether degradation is qualitative or quantitative as
25 far as that part of the regulations and approving any

1 short-term degradation.

2 So I don't know that not having baseline
3 prohibits or limits the Commission in approving
4 activities.

5 CHAIR STRINGER: Okay. Thank you.

6 Ms. Aranda, do you have anything to add to
7 that response?

8 MS. ARANDA: I just wanted to ask if -- did
9 you also need a clarification on downstream? Did you
10 mention downstream protections? Did I hear correctly?

11 CHAIR STRINGER: I wasn't including that
12 aspect in my question. I was just thinking about the
13 segments with -- that don't have the baseline data.

14 MS. ARANDA: Understood.

15 CHAIR STRINGER: And then my one follow-up
16 question to that is if the degradation goes longer than
17 the allowable six months for those temporary activities,
18 what are the consequences or what actions occur after
19 that point if they go beyond that six-month requirement
20 in the standards?

21 MS. FULLAM: Chair Stringer, to my knowledge
22 there is nothing in 20.6.4 NMAC that discusses what
23 happens next.

24 CHAIR STRINGER: Thank you.

25 Those are my questions. Thanks.

1 HEARING OFFICER CHAKALIAN: Commissioner
2 Timmons?

3 COMMISSIONER TIMMONS: Thank you, Mr. Hearing
4 Officer.

5 My question is, I guess, to get a little
6 reminder on what is the current monitoring frequency in
7 this area?

8 MS. FULLAM: Commissioner Timmons, it's my
9 understanding we're on an eight- to 10-year monitoring
10 cycle throughout the state, and we finished up in the
11 Upper Pecos last cycle -- or last field 2020. I think
12 2020 is when we finished up in the Upper Pecos, and we
13 probably won't be back in there for eight to 10 years.
14 That does not preclude us from going in for
15 project-specific monitoring activities.

16 COMMISSIONER TIMMONS: Okay. Thank you for
17 that.

18 I think my other question just following up on
19 that is just thinking about in general for ONRW, does
20 that provide any further motivation or effort toward
21 increasing frequency of monitoring in order to have a
22 handle on what degradation might be happening? Is
23 there -- I guess, does that elevate it to a priority
24 list by any means?

25 MS. FULLAM: Commissioner Timmons, it's all

1 dependent on resources, and getting our ambient water
2 quality is probably our first priority, but ONRWs are
3 definitely considered a priority, as well. It's just
4 dependent on available resources for monitoring.

5 COMMISSIONER TIMMONS: Okay.

6 MS. FULLAM: Short answer, no.

7 COMMISSIONER TIMMONS: Right. Thank you for
8 that.

9 HEARING OFFICER CHAKALIAN: Are there any
10 other Commissioners who have cross-examination for the
11 Department's witnesses?

12 Are there any members of the public who have
13 cross-examination for the Department's witnesses?

14 Mr. Verheul, may these two witnesses be
15 excused?

16 MR. VERHEUL: They may. Thank you,
17 Mr. Hearing Officer.

18 HEARING OFFICER CHAKALIAN: You're welcome.

19 Now let's see. I saw petitioners' witness on
20 the camera a little while ago.

21 Ms. Nokes?

22 MS. FOX: Hello, Mr. --

23 HEARING OFFICER CHAKALIAN: Ms. Fox?

24 MS. FOX: -- Hearing Officer.

25 Hello, Mr. Hearing Officer, Members of the

1 Commission.

2 My name is Tannis Fox. I'm an attorney with
3 Western Environmental Law Center and will be
4 representing petitioners and will be conducting the next
5 two examinations.

6 HEARING OFFICER CHAKALIAN: Please proceed.

7 MS. FOX: And -- thank you, Mr. Hearing
8 Officer.

9 And thank you, Mr. Hearing Officer, for
10 allowing these two witnesses to go out of order.

11 I'd like to call now Ms. Paula Garcia.

12 HEARING OFFICER CHAKALIAN: Ms. Garcia and
13 Mr. Propst, can you both turn on your cameras so that we
14 can get you sworn in.

15 Excellent.

16 Would you spell your names for the court
17 reporter, please, one at a time, starting with
18 Ms. Garcia.

19 MS. GARCIA: My name is Paula Garcia,
20 P-A-U-L-A G-A-R-C-I-A.

21 HEARING OFFICER CHAKALIAN: Okay.

22 And Mr. Propst?

23 DR. PROPST: My name is David Propst,
24 D-A-V-I-D P-R-O-P-S-T.

25 HEARING OFFICER CHAKALIAN: Ms. Arreguin?

1 (PAULA GARCIA and DAVID PROPST, PhD, were duly
2 sworn or affirmed.)

3 HEARING OFFICER CHAKALIAN: Okay. Ms. Fox,
4 please proceed.

5 MS. FOX: Thank you, Mr. Hearing Officer.

6 PAULA GARCIA
7 having been first duly sworn or affirmed, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. FOX:

11 Q. Ms. Garcia, please state your name.

12 A. Paula Garcia.

13 Q. Ms. Garcia, please describe your relevant
14 experience as a witness in this matter.

15 A. I am Executive Director of the New Mexico
16 Acequia Association, and I have held this position for
17 more than 24 years. I'm a rancher, farmer and a
18 parciante of Acequia del Alto del Norte in the Mora
19 Valley. I also serve as Commissioner on the New Mexico
20 Interstate Stream Commission.

21 Q. Is Petitioners' Exhibit 22 an accurate copy of
22 your resume?

23 A. Yes.

24 Q. And are you -- you prepared testimony for this
25 proceeding which is Exhibit 21; is that correct?

1 A. Correct.

2 Q. And is that testimony accurate to the best of
3 your knowledge?

4 A. Yes, it is.

5 Q. And do you adopt that testimony as written?

6 A. Yes.

7 MS. FOX: Ms. Garcia would like to present her
8 testimony before the Commission.

9 Ms. Garcia, please proceed with your
10 presentation.

11 MS. GARCIA: Thank you.

12 The New Mexico Acequia Association is a
13 petitioner in the petition to designate waters of the
14 Upper Pecos watershed as Outstanding National Resource
15 Waters.

16 Thank you for the opportunity to explain why
17 our organization is a petitioner and supports this
18 critical designation.

19 My testimony will address Section 20.6.4.9B
20 NMAC, demonstrating that the designation of the waters
21 of the Upper Pecos watershed as ONRWs will benefit the
22 State of New Mexico.

23 The NMAA is a statewide membership-based
24 association of acequias, governed by a federation of
25 acequias, the Congreso de las Acequias, which

1 unanimously supports protection of the Upper Pecos
2 watershed through ONRW designation.

3 The mission of the NMAA is to protect water
4 and our acequias, to grow healthy food for our families
5 and communities and to honor and preserve our cultural
6 heritage. A primary means of realizing our mission is
7 through the conservation and protection of water for
8 future generations of acequeros.

9 Agua es vida. The waters of New Mexico's
10 Upper Pecos watershed are the lifeblood of the region's
11 acequia system, sustaining and enriching centuries-old
12 acequias and farming and ranching traditions that depend
13 upon clean water. Acequias depend upon clean water from
14 the Upper Pecos watershed to irrigate traditional crops
15 and to sustain vital cultural traditions.

16 Acequias systems provide a significant benefit
17 to the State of New Mexico, both culturally and
18 economically. Acequias have a long history of respect
19 and stewardship of the waters of the Upper Pecos which
20 has resulted in the high water quality that these
21 precious waters afford. Our intricate customs and
22 practice additions, our collective approach to water
23 management and our unique role in water governance has
24 resulted in extensive empirical and cultural knowledge
25 about the Pecos River and its tributaries.

1 Based upon this knowledge, NMAA is compelled
2 not only to support designating waters of the Upper
3 Pecos watershed as ONRWs, but to be a petitioner in this
4 important action before the Water Quality Control
5 Commission.

6 One of the most effective ways to deliver on
7 the promise of clean water and resilient watersheds for
8 present and future generations is to designate the Upper
9 Pecos watershed waters as Outstanding Waters. The ONRW
10 designation will help ensure that the Upper Pecos
11 watershed remains clean and sustains present and future
12 generations of acequia parciales.

13 Importantly, the ONRW designation will
14 complement and enhance acequias' traditional and
15 historic uses of water, and we stand in strong support
16 of this designation. Supporting and preserving New
17 Mexico's acequias and their parciales' ability to
18 continue to feed their families and communities and
19 preserve their centuries-old way of life represents a
20 significant benefit to New Mexico, its history and its
21 multicultural landscape and its commitment to preserving
22 the family and cultural traditions of acequia life.

23 MS. FOX: Thank you, Ms. Garcia.

24 That concludes her testimony. She'll now
25 stand for cross-examination from the parties and

1 questions from the Commission.

2 HEARING OFFICER CHAKALIAN: Are there any
3 parties with cross-examination questions?

4 MR. VERHEUL: No questions from the
5 Environment Department, Mr. Hearing Officer. We thank
6 Ms. Garcia for her testimony.

7 MR. MC QUILLAN: Mr. Hearing Officer, I have
8 no questions. Thank you.

9 HEARING OFFICER CHAKALIAN: Are there any
10 Commissioners with cross-examination questions for this
11 witness?

12 Are there any members of the public with
13 cross-examination questions?

14 Ms. Fox, may Ms. Garcia be excused?

15 MS. FOX: Yes, she may, Mr. Hearing Officer.

16 HEARING OFFICER CHAKALIAN: Would you like to
17 call Mr. Propst?

18 MS. FOX: Yes. I now call Dr. David Propst.

19 DAVID PROPST, PhD

20 having been first duly sworn or affirmed, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. FOX:

24 Q. Please state your name.

25 A. It's David L. Propst.

1 Q. Dr. Propst, what is your educational
2 background?

3 A. I have a bachelor of science from New Mexico
4 State University and a master's and PhD in biology from
5 Colorado State University.

6 Q. Would you please describe your work experience
7 briefly.

8 A. For 26 years I've worked for the Department of
9 Game and Fish as its native fish biologist. In that
10 capacity I worked throughout New Mexico and adjacent
11 states investigating biology of native and nonnative
12 fishes, dynamics of fish assemblages, response --
13 responses of fish assemblages to natural and
14 human-caused disturbance and taxonomy and systematics of
15 native fishes. Much of this work has been published in
16 peer-reviewed scientific journals.

17 Also worked with colleagues from other state
18 and federal agencies, academia and NGOs in developing
19 and implementing conservation programs for native fishes
20 of the Rio Grande and Pecos, San Juan and Gila Rivers.

21 Currently I am adjunct research professor at
22 the University of New Mexico, where I continue to work
23 with my -- with colleagues on biology and conservation
24 of arid-land fishes.

25 Q. Is Petitioners' Exhibit 12 an accurate copy of

1 your curriculum vitae?

2 A. Yes, it is.

3 Q. And, Dr. Propst, you prepared testimony for
4 this proceeding which is Petitioners' Exhibit 11 and
5 which included over 50 sources for your testimony; is
6 that correct?

7 A. Yes, it is.

8 Q. And is your testimony correct to the best of
9 your knowledge?

10 A. Yes, except for a typographical error on page
11 11 of my written testimony in Table 2. The number of
12 significant -- or SGCN species for Davis Creek should be
13 18, not 187.

14 Q. There's a lot of SGN species, but not 187.

15 A. Correct.

16 Q. Dr. Propst, do you adopt your testimony with
17 that one correction?

18 A. Yes, I do.

19 Q. Could you please summarize the testimony that
20 you will provide to the Commissioners today?

21 A. Yes.

22 There are 16 named waters and 96 unnamed
23 tributaries to those waters and 16 unnamed wetlands
24 within the boundaries of the proposed ONRW for the Upper
25 Pecos watershed. Functionally these waters can be

1 classified as perennial or nonperennial. There is
2 considerable information on the ecological processes
3 within perennial waters and their connections to the
4 surrounding terrestrial habitats.

5 Until the past 20 years or so, little
6 attention, however, was given to the role of
7 nonperennial waters to the overall ecological health and
8 functioning of the larger watershed. Products of
9 ecological processes, chemical, physical and biological,
10 that occur in nonperennial waters contribute measurably
11 to the ecological processes that occur within the
12 perennial waters.

13 Today my testimony will focus on the critical
14 role of nonperennial waters and wetlands that they have
15 and maintain and ensuring the vitality and persistence
16 of aquatic and riparian communities associated with the
17 perennial waters. In my opinion, the exceptional
18 ecological significance of the Upper Pecos watershed is
19 evident when it is viewed in a holistic perspective that
20 includes all features, perennial and nonperennial.

21 MS. FOX: Dr. Propst has prepared a PowerPoint
22 presentation summarizing his testimony that we filed
23 with the Commission on April 8th.

24 Dr. Propst, would you please proceed with your
25 presentation.

1 DR. PROPST: You ready or --

2 MS. FOX: (Nods head.)

3 DR. PROPST: Okay.

4 Good afternoon, Madam Chair, Commissioners and
5 Hearing Officers.

6 Thank you -- let me close my --

7 MS. FOX: Right. Close --

8 DR. PROPST: -- captioning.

9 MS. FOX: Close the close caption. Thank you.

10 DR. PROPST: Thank you for the opportunity to
11 present testimony in support of the petition to
12 designate the Upper Pecos watershed as an Outstanding
13 National Resource Water.

14 My presentation today will focus on and
15 illustrate the biological, physical and chemical
16 importance of aquatic habitats of perennial and
17 nonperennial watercourses and wetlands and how these
18 habitats contribute to the exceptional ecological
19 significance of the proposed Pecos watershed ONRW.

20 Loss or impairment of any hydrologic feature
21 of the Upper Pecos watershed diminishes its ability to
22 provide essential ecosystem services such as key
23 habitats for wildlife, nutrient processing and transfer,
24 flood attenuation, enhanced water quality and
25 recreational opportunities. Collectively these waters,

1 perennial and nonperennial, because of their
2 connectivity and interdependence are, in my professional
3 opinion, worthy of ONRW designation.

4 Within the proposed ONRW, there are 16 named
5 and 96 unnamed watercourses or stream channels and 16
6 unnamed wetlands. Collectively these habitats provide
7 platforms for an array of ecological activities that
8 contribute to the overall vibrant functioning of the
9 Upper Pecos watershed ecosystem. Loss or diminution of
10 any hydrologic feature, perennial or nonperennial,
11 impairs the ecological functioning of the Upper Pecos
12 ecosystem.

13 In addition to the Pecos River, there are 15
14 named watercourses in the Upper Pecos watershed. All 15
15 named watercourses are ultimately confluent with the
16 Pecos River. The unnamed watercourses feed into the
17 named tributaries in Pecos River to create an
18 interconnected and interdependent aquatic network in
19 which numerous ecological processes occur that are
20 critical to the overall health of the Upper Pecos
21 watershed ecosystem.

22 The Upper Pecos watershed supports a rich
23 diversity of wildlife and plants, a major reason for the
24 presence seasonal and year-round of so many species.
25 This is a diversity of habitats, including those

1 associated with perennial and nonperennial watercourses
2 and wetlands.

3 The New Mexico State Wildlife Action Plan
4 identifies species whose persistence has been
5 compromised for various reasons and has designated such
6 species as species of greatest conservation need.

7 In the Southern Rocky Mountains ecoregion,
8 which includes the Upper Pecos watershed, 63 SGCN
9 species are present. Of these 63 species, 23 occur in
10 the Upper Pecos watershed. Almost all are birds. In
11 addition to being designated SGCN species, four birds
12 and one mammal that occur in the Upper Pecos watershed
13 receive federal or state protection.

14 Although Rio Grande cutthroat trout is not
15 protected under the federal Endangered Species Act or
16 New Mexico Wildlife Conservation Act, and it is not an
17 SGCN species, it is a recreationally important species
18 in addition to being the New Mexico state fish. The Rio
19 Grande Cutthroat Trout Conservation Strategy calls for
20 13 to 15 conservation populations in the Pecos
21 geographic management unit.

22 The Upper Pecos watershed currently supports
23 six Rio Grande cutthroat trout conservation populations.
24 Nearly one half of the Pecos GMU conservation goal of
25 the conservation strategy for the species are these six

1 populations, or one-third. Each of these populations is
2 protected from nonnative trout by natural or constructed
3 fish movement barriers.

4 In addition to Rio Grande cutthroat trout,
5 there are also rainbow, brown and other cutthroat trouts
6 in the streams of the Upper Pecos watershed.
7 Collectively, these trout populations provide a
8 recreational fishery that draws anglers not just from
9 New Mexico, but other states and nations.

10 Six plant species found in the Upper Pecos
11 watershed are recognized as rare or in need of some
12 level of protection. Three of these species, mountain
13 lily, yellow lady's slipper and hooded ladies' tresses,
14 occur primarily in moist habitats such as the wetlands
15 associated with the Upper Pecos watershed streams. Holy
16 Ghost ipomoposis occurs only along the short reach of
17 Holy Ghost Creek.

18 The exceptional character of the Upper Pecos
19 watershed is a consequence of it being a functioning
20 ecosystem with all parts contributing. An often
21 overlooked component of an ecologically functional
22 watershed is the network of wetlands and nonperennial
23 tributaries and their contribution to the vitality of
24 the perennial streams in the systems and the entire
25 watershed.

1 The following is a brief overview of the
2 physical, chemical and biological linkages between
3 nonperennial and perennial watercourses and the
4 important contributions of nonperennial tributaries to
5 the ecological functioning of the Upper Pecos watershed.

6 So when and how are nonperennial stream
7 courses wetted?

8 Surface flows in nonperennial channels occurs
9 mainly during spring snowmelt and occasionally after
10 late summer monsoon storms. Inter-year flow variation
11 and nonperennial watercourses is considerable.
12 Consequently, the spatial and temporal extent of wetted
13 habitats differs substantially from year to year.

14 This slide illustrates differences in annual
15 discharge in the Pecos River at the USGS gauge near the
16 Village of Pecos.

17 There was practically no spring runoff flow
18 falls in 2000, thus few, if any, nonperennial
19 watercourses were wetted. Five years later, in 2005,
20 peak spring discharge was more than triple that of 2000,
21 and most, if not all, nonperennial watercourses were
22 wetted. Few, if any, nonperennial watercourses were
23 wetted by monsoon precipitation in 2000 or 2005. In
24 2010 and 2015, wetting of many nonperennial watercourses
25 likely occurred during spring snowmelt and after monsoon

1 storms.

2 In the course of a year, the hydrologic cycle
3 of the stereotypic nonperennial stream might be like
4 that illustrated on this slide. For much of the year, a
5 nonperennial channel is dry, and there appears to be
6 little physical, chemical or biological activity, but as
7 flows increase with snowmelt, channel sediments are
8 mobilized, with larger particles grinding the leaf
9 litter that has accumulated over the previous months.

10 This litter is colonized by microbes that are
11 in turn grazed by aquatic insects. These aquatic
12 insects are the primary food source for the trout that
13 are sought by anglers in the perennial waters. As
14 snowmelt flows recede, habitats shrink during summer,
15 water temperatures increase, and dissolved oxygen levels
16 decline. And those that can, like the giant water bug,
17 depart. Other macroinvertebrates remain.

18 Depending on numerous physical factors, such
19 as the channels underlying geophysical features, pooled
20 water may persist within the nonperennial challenge
21 during summer. These scattered habitats often have
22 luxuriant growths of algae, or a variety of aquatic
23 insects such as water boatman, pictured here, might be
24 found.

25 Monsoon storms bring sufficient water to

1 reconnect channel habitats as well as provide a corridor
2 for aquatic macroinvertebrates to move up and down
3 stream. By late summer or October, monsoon flow
4 contributions have ceased, and the channel is again dry.

5 The watercourses of the Upper Pecos have a
6 dendritic pattern, branch like the roots of a tree, with
7 the smaller tendrils attached to larger ones and so on
8 to the largest being attached to the tap root, the main
9 channel. A critical aspect of this pattern is its
10 connectivity. Connectivity need not be temporally
11 continuous, but connectivity must occur at a frequency
12 that enables the products of physical, chemical and
13 biological processes in the upper reaches to be conveyed
14 to downstream perennial reaches.

15 In a dendritic system like the Upper Pecos,
16 the smallest branches are typically nonperennial. Only
17 the largest branches are perennial. Inorganic and
18 organic matter from surrounding watershed is washed,
19 blown or falls into stream courses where organic matter
20 undergoes physical, chemical and biological changes,
21 while inorganic matter is physically and chemically
22 supposed.

23 Each watercourse, wet or dry, perennial or
24 not, has three dimensions, longitudinal, lateral and
25 vertical. In each dimension, physical, chemical and

1 biological processes occur in both directions, up- and
2 downstream, longitudinally, back and forth from stream
3 channel to riparian community laterally and vertically
4 into the channel substrate or hyporheic zone and up into
5 the water column.

6 For example, the life cycle of the mayfly,
7 Callibaetis, illustrates the bidirectionality of each
8 spatial dimension. Aerial adult females deposit eggs in
9 the wetted nonperennial streams where in time the eggs
10 hatch. After releasing eggs, the spent females die, and
11 their bodies float downstream to decay or be consumed by
12 feeding trout, illustrating the longitudinal
13 connectivity. Males fly to riparian habitats to die and
14 is an example of lateral connectivity. After hatching,
15 Callibaetis remain in the stream, feeding on organic
16 matter.

17 As flows diminish, the Callibaetis naiads, or
18 young, finds refuge in the wetted hyporheic, a vertical
19 connectivity. And when flows return, they emerge and
20 molt on exposed rocks. Following a molt -- following
21 molting, adults fly upstream and gather in mating
22 swarms, and females deposit eggs in the stream, a
23 longitudinal dimension, and the cycle begins again.

24 In addition to spatial dimensions, there is a
25 time dimension to the biological, physical and chemical

1 processes. Nonperennial watercourses go through at
2 least three wetness phases each time there is sufficient
3 flow to wet the channel, as illustrated in this
4 generalized depiction of the annual wet/dry cycle of a
5 nonperennial watercourse.

6 The duration of each phase is largely
7 dependent upon regional precipitation, winter snowpack
8 and late summer monsoon rains. For much of the year,
9 the channel is dry, and there is little activity in
10 biological, physical and chemical processes. But that
11 which does occur is ecologically important.

12 For example, leaf litter accumulates that
13 ultimately becomes an important energy source for
14 microbes that colonize leaves and are in turn consumed
15 by aquatic insects. Once melting snows or monsoon rains
16 restore surface flows, all processes rapidly become
17 supercharged. The hyporheic zone is refreshed, and
18 preadult life stages of aquatic insects that sought
19 refuge in the hyporheic during the dry season emerge to
20 feed on fine particulate organic matter, molt and
21 reproduce.

22 As snowmelt or monsoon flows decline, surface
23 water becomes limited to scattered pools where
24 decomposition of organic matter continues and organisms
25 that can lead to shrinking and increasingly inhospitable

1 habitat for downstream perennial reaches or make their
2 way to adjacent perennial watercourses.

3 The foregoing, albeit brief, provides a
4 snapshot of some of the biological, physical and
5 chemical processes that occur in nonperennial
6 watercourses and ultimately make a significant
7 contribution to the ecological functioning of the Upper
8 Pecos watershed.

9 Until this point I've given little attention
10 to the 16 unnamed wetlands that occur in the Upper Pecos
11 watershed. A good definition of a wetland is an area
12 that is inundated or saturated at a frequency sufficient
13 to support a prevalence of vegetation adapted for life
14 in water-saturated soil conditions.

15 Wetlands of the Upper Pecos watershed provide
16 essential habitat for a variety of species, including
17 the northern leopard frog, hydrophilic, or water-loving
18 plants, such as yellow lady's slippers, birds and
19 numerous aquatic insects. During elevated flows,
20 wetlands absorb water and thus help attenuate the
21 effects of floods. As flows recede, wetlands function
22 as water reservoirs, allowing water to seep into
23 adjacent watercourses during dry periods.

24 The foregoing has provided a brief overview of
25 the complex and dynamic relationships between

1 nonperennial watercourses and the perennial streams they
2 feed into. Much of the energy that supports life in
3 perennial streams is derived from nonperennial
4 watercourses. If these connections are lost or
5 compromised, the ecological functioning of the entire
6 watershed is compromised.

7 A vibrant, healthy ecosystem provides numerous
8 services. Some are readily recognized, for example,
9 clean freshwater, while others are less obvious, such as
10 nutrient cycling. In my professional opinion, the
11 wetlands and nonperennial and perennial waters of the
12 upper Pecos watershed are ecologically inseparable.
13 Together they make the Upper Pecos watershed an
14 exceptional and ecologically significant stream network
15 worthy of designation as Outstanding National Resource
16 Waters.

17 And that's my testimony.

18 Thank you.

19 And with the Hearing Officer's pleasure, I
20 think I can answer questions.

21 HEARING OFFICER CHAKALIAN: Are there any
22 parties that have cross-examination for this witness?

23 MR. MC QUILLAN: Mr. Hearing Officer, I
24 have -- I have one question.

25 HEARING OFFICER CHAKALIAN: Please.

1 CROSS-EXAMINATION

2 BY MR. MC QUILLAN:

3 Q. Dr. Propst, if you're not a spelunker like me,
4 you may not be aware.

5 Have you heard about the two species of
6 arachnids that live in Tererro Cave, which is just a
7 stone's throw from Pecos River in the Tererro area, that
8 have been named in honor of Jemez Pueblo because of the
9 connection through Pecos Pueblo, the ancestral pueblo
10 there?

11 A. No, I'm not. I guess I should be, though.

12 MR. MC QUILLAN: I'll address that in my -- in
13 my testimony.

14 Thank you.

15 DR. PROPST: Um-hum.

16 HEARING OFFICER CHAKALIAN: Mr. Verheul?

17 MR. VERHEUL: The Environment Department has
18 no questions.

19 Thank you, Dr. Propst.

20 HEARING OFFICER CHAKALIAN: Are there any
21 Commissioners with cross-examination for this witness?

22 Are there any members of the public with
23 cross-examination for this witness?

24 Ms. Fox, may this witness be excused?

25 MS. FOX: Yes, Mr. Hearing Officer.

1 And with that, that concludes petitioners'
2 case.

3 HEARING OFFICER CHAKALIAN: Thank you,
4 Ms. Fox.

5 Mr. McQuillan.

6 MR. MC QUILLAN: Mr. Hearing Officer, my
7 screen has kind of frozen up, but I think you can -- can
8 you see me and hear me?

9 HEARING OFFICER CHAKALIAN: Yes.

10 MR. MC QUILLAN: Okay.

11 I -- with your permission, sir, I'd like to
12 forego an opening statement and just proceed right into
13 my -- into my testimony.

14 HEARING OFFICER CHAKALIAN: Okay.

15 Have you been sworn in, sir?

16 MR. MC QUILLAN: Yes, sir, I have.

17 HEARING OFFICER CHAKALIAN: Okay.

18 MR. MC QUILLAN: First thing in the morning.

19 HEARING OFFICER CHAKALIAN: Please proceed.

20 MR. MC QUILLAN: And I have a PowerPoint, but
21 it's not letting me share it.

22 HEARING OFFICER CHAKALIAN: That's because
23 Ms. Jones undid the screen sharing a moment ago.

24 Ms. Jones?

25 You have permission now.

1 MS. JONES: Mr. McQuillan, you should be able
2 to share your screen.

3 MR. MC QUILLAN: Okay. It's not -- there's
4 a -- there may be a slow connection on my end. I'm
5 just -- my screen is frozen. So maybe I'll just go --
6 walk through it, because it does parallel my -- my
7 direct testimony, the written statement that I filed.

8 DENNIS MC QUILLAN
9 having been first duly sworn or affirmed, was
10 examined and testified as follows:

11 DIRECT TESTIMONY
12 OF MR. MC QUILLAN:

13 MR. MC QUILLAN: My name is Dennis McQuillan,
14 and I am a hydrogeologist by education with a minor in
15 chemistry, math and physics.

16 I worked for the Environment Department and
17 its predecessor agency for more than four decades and
18 did a lot of work in the Upper Pecos. I -- early in my
19 career, there were periodic fish kills from the old
20 Tererro mine that I worked on and then a catastrophic
21 fish kill that's detailed in my written testimony. I
22 worked with the Upper Pecos (unintelligible and/or
23 inaudible) on liquid waste septic tank issues and made
24 some presentations to them and -- and offered input on
25 their original watershed management plan.

1 I also worked on some of the wildfires in the
2 area, most notably the Tres Lagunas fire, when I was
3 with the Drinking Water Bureau and looking at the
4 possible impacts of the -- of the wildfire, which there
5 were significant impacts.

6 I also lived in Pecos for two years, more than
7 two years, and I really would like to echo some of the
8 statements that were made by residents of that area of
9 the -- just the really wonderful nature of that
10 community, with the Upper Pecos watershed and the Pecos
11 Wilderness in your backyard. And I will provide some --
12 as it's in my written testimony, some personal testimony
13 on just the outstanding recreational, multigenerational
14 value of the -- of the Upper Pecos watershed with an
15 example of my family, even before I had a family.

16 The -- I did -- I presented a paper last
17 Friday at the New Mexico Geological Society meeting.
18 It's in my -- in my slides.

19 Let me see if it will let me -- yeah. I can
20 share now. Wait. Apologize for that.

21 Can you all see my slides?

22 THE REPORTER: No.

23 MR. MC QUILLAN: It says it's connecting.

24 I'll just move on. I apologize. I think the
25 connection is slow out here in the woods where I live

1 because of the wind.

2 But I presented a paper on the caves of the
3 Upper Pecos. There's -- there's a significant cave in
4 Tererro.

5 And there is one typo in my written testimony
6 on page 17 of my summary, which is page 25 of the PDF,
7 where I describe the -- I use the term "scared" instead
8 of "sacred" cave. And the cave is -- is sacred, not
9 scared.

10 But it was the leadership of Pecos Pueblo that
11 got the State of New Mexico to -- to put a gate and a
12 lock on the Tererro cave because of the profound
13 spiritual significance that this cave has to the
14 descendants of Pecos Pueblo who reside at the Jemez
15 Pueblo as -- as was described by -- by Lieutenant -- the
16 Lieutenant Governor Toya. In fact, I used a paper he
17 had written that's posted online for some of the
18 information on my -- on my paper I presented last week.

19 And there are two arachnids that live -- that
20 are -- the type locality is the Tererro cave and the
21 immediate vicinity. As far as I know, they -- they live
22 only here, anywhere on earth. One is a lampshade
23 spider, and the other one is a harvestmen. And they
24 have a very protected environment. So the -- the gating
25 and locking of this cave not only protects the

1 anthropological, spiritual use of this cave, but also
2 the unique arachnids that live inside.

3 So I wanted to thank the petitioners for
4 stepping up to the plate and filing the petition.
5 It's -- the petition and the testimony they have
6 presented is very compelling. And I wanted to thank the
7 Environment Department Surface Water Bureau for their
8 expert testimony which -- which provides even more
9 compelling information to inform the Commission's
10 decision on this.

11 So I wanted to just provide some additional
12 technical information that I see in the petition on the
13 activities that might reduce water quality in the
14 watershed, the exceptional recreational significance as
15 well as the designation of nominated waters being
16 beneficial to the state.

17 So the hardrock mining that's addressed in the
18 petition is a very serious issue. The mining occurred
19 in the -- in the late 1800s and early 1900s. It caused
20 significant water pollution. You can see in my written
21 testimony I've got pictures of Willow Creek before the
22 reclamation. Picture was taken in 1991. And after the
23 restoration was completed of the creek where mine waste
24 was removed and -- and you can see the -- the acid mine
25 drainage in the pre picture in an engineered watershed

1 afterward.

2 So there's been significant progress made,
3 although the legislature is still appropriating money
4 under the -- as explained in my testimony, of the
5 20 percent share of the state for ongoing reclamation.
6 So this catastrophic fish kill occurred in 1991. About
7 a hundred thousand trout died as a result of aluminum
8 and zinc being washed into the Pecos River.

9 And that triggered the negotiation of
10 administrative -- an administrative order on consent,
11 which I had a major role in negotiating with the mining
12 company and with the parties that led to an ongoing
13 success story. Now, there's still a tunnel that -- that
14 drains the mine workings, and there's still work going
15 on both on the mine site and the El Molino Mill. They
16 had an aerial tramway that took ore from the Tererro
17 mine down to the mill.

18 But I think that the designation of ONRW is
19 really important to ensure that the cleanup of the
20 historical mining, which has been going on for 30 years
21 now, is completed, and secondly, to ensure that any
22 future mining is conducted in a manner to avoid
23 degradation of the existing high-quality water and the
24 exceptional recreational, ecological significance.

25 My -- my written testimony -- there was some

1 discussion earlier about possible future mining. There
2 are mineral deposits that have not been exploited, and
3 there's a mining company that's looking at this. They
4 have a web page that has geologic cross-sections and
5 description of the metals that are found, and they
6 applied for a permit to do some exploratory drilling.

7 So it is possible that mining may occur in the
8 future. That wouldn't be prohibited by the ONRW
9 designation, but we certainly want to make sure that
10 future activities comply with the antidegradation
11 standard.

12 There's also septic systems. As far as I
13 know, we haven't -- and I was a liquid waste program
14 manager for about a decade when I worked for the
15 Environment Department, and as far as I know, we don't
16 have any documented well water contamination from this.
17 And -- but there are numerous septic systems in the
18 watershed, and it's an issue that needs to be monitored.
19 It's mentioned in the Upper Pecos Watershed Association
20 plan for the -- for the watershed.

21 There's been a lot of discussion of
22 recreational overuse. And the petitioners addressed
23 this in their -- in their material. And interestingly,
24 I think one of the earlier witnesses talked about the
25 COVID pandemic and how people flocked up into the --

1 into the watershed, into the wilderness, into the Upper
2 Pecos watershed. That was a good thing.

3 But Dalton Canyon in particular was really --
4 like earlier witness said, they saw an historical usage
5 of that. And one of the links in my written testimony
6 is to a web site by Santa Fe National Forest where they
7 describe that -- that increase in use and how they're
8 taking measures to limit vehicular traffic. They put up
9 permanent barriers to keep people and cars out of the
10 riparian area.

11 And I think, you know, the bottom line on this
12 recreational use is that the Forest Service and the
13 State Parks Division, the experts there know how to
14 handle this, and they're taking efforts to respond to
15 the increased use and to protect the resources that are
16 up there.

17 Waste management. There are vacuum trucks
18 that -- that drive up and pump the material out of
19 septic tanks as part of the routine maintenance, and on
20 a statewide basis we have had issues with some of these
21 vacuum truck operators dumping into rivers and arroyos
22 and irrigation canals.

23 And there's also the issue of recreational
24 vehicles. Sometimes they don't take their black water
25 or gray water to a permitted facility, and they

1 discharge it in roads or flat areas in remote areas of
2 the forest. And that's a potential issue, as well.

3 Wildfires. There's no question that in New
4 Mexico -- and I have references in my testimony on
5 this -- that the size of wildfires and the intensity
6 have increased over the past several decades.

7 And another one of my references is a report
8 with the New Mexico Bureau of Geology. They put out a
9 draft last year and updated it in January of this year.
10 And they are predicting that the frequency and severity
11 of wildfires in the state are predicted to increase over
12 the next several decades.

13 Now, with the wildfires, and particularly
14 severe fires, when the vegetation burns, and they use --
15 and the smoke and the material condenses, it can create
16 a waxy type of deposit on the soil, which makes the
17 soils hydrophobic, meaning that they repel water. And
18 in fact, the Forest Service people sometimes take an
19 eyedropper and put it on a burned area as a -- as a
20 qualitative assessment of -- of how hydrophobic soil is.

21 But the significance of this is that when it
22 rains and you have snowmelt the water runs off and in a
23 post burn area can create flooding and can damage water
24 infrastructure, accelerate erosion, sedimentation
25 downstream from the erosion, can create debris flows.

1 I've got a video of a debris flow from the Las
2 Conchas Fire in my written testimony. We didn't have
3 debris flows in Holy Ghost Canyon after the Tres Lagunas
4 fire, and there was some damage to roads in the human
5 infrastructure, some cabins. Obviously, and I think
6 other witnesses have mentioned the potential for water
7 pollution, as well as fish kills are a very common
8 occurrence when the -- when the river turns gray and
9 black, and -- and we've had that certainly in the
10 watershed.

11 My written testimony has a picture of a
12 high-severity burn area from the 2011 Las Conchas
13 wildfire, and it's -- you can see the hydrophobic soil
14 and the black sticks. It's all the flips of the trees.
15 It's really pretty staggering what the damage of a
16 tree-killing fire like a high-severity burn can do to
17 a -- to a forest.

18 I also have a picture -- I didn't find any
19 public domain pictures of debris flows in Holy Ghost
20 Canyon, but I do have one from USGS, US Geological
21 Survey, from the Whitewater-Baldy Complex fire down in
22 the Gila in the Southwest as a -- you've seen it in my
23 written testimony, a picture of a road that's littered
24 on one side with the debris flow of rocks and boulders
25 coming down. And this is a fairly common phenomenon

1 that you'll have in areas that have terrain after a
2 fire.

3 Now, the thing about forests -- and this has
4 been -- this is known to drinking water administrators
5 and scientists all over the world -- is they typically
6 produce the most stable and highest quality of water for
7 use. And all over the world and indeed in New Mexico,
8 you'll see drainages, rivers and creeks that come out of
9 mountain areas damned up for water supply because of
10 this.

11 Now, the high-severity fires, where most trees
12 are killed, can result in either the forest permanently
13 being changed to a different type of forest or to a
14 nonforest ecosystem. And there's a picture that I
15 pulled out of the Bureau of Geology report that shows
16 the Dalton Canyon fire. And 20 years later after the
17 fire, it's still a scrub oak ecosystem.

18 Now, historically before climate change, we
19 would expect that the scrub oak would return to the burn
20 area in the New Mexico mountains, then aspens, and in a
21 conifer forest. But it's uncertain now if the forest is
22 going to recover the way it did historically in the --
23 in the fire type of climate we have, and it just remains
24 to be seen. Research is also needed on how this
25 conversion of forests to different forest types or to

1 nonforest ecosystems is going to affect water quality.

2 So there's a lot we don't know of -- about.

3 There's also interactions. You know, the
4 drought -- the climate change can lead to attacks by
5 bark beetles and -- and these are all interrelated with
6 fire risk, as well.

7 So I quoted extensively from the Bureau of
8 Geology report.

9 With regard to the exceptional recreational
10 significance, I -- I think that the recreational economy
11 of the Village of Pecos is clear evidence of the
12 exceptional nature of the -- the exceptional value of
13 the recreational opportunities in the Upper Pecos
14 watershed. You've heard from a lot of witnesses about
15 these opportunities, and I can -- I can provide examples
16 of my own, multigenerational enjoyment of this.

17 I have a picture of myself in the -- in my
18 written testimony at Cave Creek in 1979. That's not in
19 the designated watershed, it's in the wilderness, but
20 typically we would camp in Panchuela Campground, which
21 is in the Upper Pecos watershed, and use that as a home
22 base for day hikes. And then I -- and I have a picture
23 of myself with my two kids at Cave Creek years later, in
24 2005.

25 And, you know, this -- Pecos in the Upper

1 Pecos watershed and these camping trips and hiking and
2 backpacking, you know, you have these moments as you go
3 through life where you have this realization that,
4 golly, this is -- this is about as good as life gets,
5 you know, I -- when I was hiking with my kids and
6 backpacking and -- and taking them to all the cool
7 places that I liked. And I think this adds to the
8 exceptional significance of the recreational
9 opportunities in the watershed.

10 I also made reference to the New Mexico State
11 Constitution, the provision that the voters put in,
12 approved in 1971, where it states the protection of the
13 state's beautiful and healthful environment is hereby
14 declared to be of fundamental importance to the public
15 interest, health, safety and general welfare.

16 Now, I'm not a lawyer, I'm not providing legal
17 testimony. This was a sentence that was approved by the
18 voters. But I really can't think of a better example of
19 New Mexico's beautiful and healthful environment than
20 the Upper Pecos watershed and the remarkable
21 decades-long history of collaborative efforts by
22 federal, state, tribal, county, municipal, citizen and
23 industry to protect this watershed.

24 And I -- I had a -- I have a list of those
25 activities in my written testimony, and it is pretty

1 remarkable the history of efforts to protect this --
2 this incredibly valuable high-quality resource.

3 So in closing, I -- I think it's -- there's
4 ample testimony, and I think the petitioners have done a
5 great job in documenting that the designation would be
6 beneficial to the State of New Mexico, it's really
7 needed to protect the high-quality and exceptional
8 significance of these waters, particularly in light of
9 the very real threats to water quality degradation, and
10 I believe that the petitioners have complied, as the
11 Environment Department found, with the designation
12 requirements of the 20.6.4.9 Administrative Code.

13 So I strongly recommend that the Commission
14 adopt the regulations proposed by the petitioners.

15 Thank you very much.

16 HEARING OFFICER CHAKALIAN: Are there any
17 public -- excuse me.

18 Are there any parties that wish to
19 cross-examine Mr. McQuillan?

20 MS. FOX: None from petitioners, Mr. Hearing
21 Officer.

22 Thank you very much --

23 MR. VERHEUL: And none --

24 MS. FOX: -- for your testimony,
25 Mr. McQuillan.

1 MR. VERHEUL: Sorry.

2 No questions from the Department either.

3 And thanks from the Department, as well,
4 Mr. McQuillan.

5 MR. MC QUILLAN: You're welcome.

6 HEARING OFFICER CHAKALIAN: Are there any
7 Commissioners that would like to cross-examine
8 Mr. McQuillan?

9 EXAMINATION

10 BY THE COMMISSION:

11 HEARING OFFICER CHAKALIAN: Mr. --
12 Commissioner Dominguez.

13 COMMISSIONER DOMINGUEZ: Yes. Thank you,
14 Mr. Hearing Officer.

15 Mr. McQuillan, thank you for your testimony
16 this afternoon.

17 I just have a kind of a quick follow-up
18 question.

19 You had kind of talked to the fact that
20 there's a number of homes up through that area, the
21 proposed area, and from what I can see, some of them are
22 prime location, just right on the edge of the Pecos.
23 But you alluded, too, that there's a number of septic
24 systems within the proposed area.

25 And on -- based on your experience in that

1 area with the Department, is there any understanding in
2 regard as to whether all of those septic systems are
3 permitted within that area?

4 MR. MC QUILLAN: Mr. Hearing Officer,
5 Commissioner Dominguez, that's a really good question.
6 It's one that I worked with the Upper Pecos Watershed
7 Association on in the early 2000s.

8 We had a cesspool amnesty program back then,
9 where people could -- could notify the state of an
10 illegal cesspool -- they've been outlawed for decades --
11 and come to us and fix it without getting penalized. I
12 don't -- you know, we had a response, but I don't
13 know -- I think there's probably still some illegal
14 systems out there.

15 I -- without going door-to-door and looking
16 at -- I know when I lived in Pecos on East Rincon, which
17 is not in the watershed, there was an unpermitted system
18 there. You know, we didn't get hooked up to the Pecos
19 sewer system. So I think there is most likely some
20 unpermitted systems up there, and -- but the Pecos River
21 was not a stream segment that had been suspected of
22 being impacted by groundwater contaminated by septic
23 that flowed into a stream.

24 When I -- my report -- it's in my references
25 that I presented to the Water Resources Research

1 Institute, inventoried known contamination at the time,
2 and the Pecos River was not part of that inventory for
3 surface water impacts. And indeed, we didn't have any
4 evidence of groundwater -- groundwater contamination,
5 but I don't think we -- we didn't do a water fair up
6 there where we test private domestic wells, and there
7 could be some more work done on looking at potential
8 impacts.

9 Having said that, I know the hydraulic
10 gradients to groundwater are generally pretty steep, and
11 there's a large influx of high-quality water from the
12 snowmelt coming in there to flush things out.

13 COMMISSIONER DOMINGUEZ: Okay. Thank you,
14 Mr. McQuillan.

15 Mr. Hearing Officer, that's all I have.

16 HEARING OFFICER CHAKALIAN: Commissioner
17 Thomson.

18 COMMISSIONER THOMSON: Thank you, Mr. Hearing
19 Officer.

20 And, Mr. McQuillan, thank you for your
21 testimony. You brought up a number of issues that we
22 haven't heard before, and I appreciate that very much.

23 One of the -- the things that concerns me is
24 we've heard testimony that designation as an ONRW does
25 not necessarily preclude future changes in land use,

1 such as someone who would like to develop a residence on
2 a property they own.

3 My question is what type of institutional
4 constraints might there be that would protect the water
5 quality? So for example, let's talk about onsite
6 wastewater collection and treatment systems. Does the
7 Environment Department have regulatory authority over --
8 over such systems, or would that be the county or the
9 village or other -- or agency?

10 MR. MC QUILLAN: Mr. Hearing Officer,
11 Commissioner Thomson, I will -- you know, I no longer
12 speak for the Environment Department, but I am very
13 confident in providing this answer. And if -- if the
14 Environment Department would like to jump in on this,
15 they're welcome to do so, but I was the liquid waste
16 program manager for nearly a decade. And that's an
17 excellent question.

18 The -- the liquid waste systems are subject to
19 the authority in the Upper Pecos watershed of the
20 Environment Department. So if there is any new system
21 going in for a new development or if anybody replaces
22 the existing system, for whatever reason, they have to
23 get a permit from the New Mexico Environment Department.
24 And there are a number of protections that the -- that
25 the regulations have. There is the baseline standards

1 that the liquid waste systems program has.

2 The Department also has the authority to
3 impose more stringent requirements on liquid waste
4 system permits for areas that have hydrogeologic
5 vulnerability, such as a really shallow groundwater or
6 fractured rock or things like that. And this is
7 something that the Department has done, and it's based
8 on a site-by-site determination.

9 So there are lot size requirements, there are
10 setback requirements between the septic and the well --
11 you know, I'm preaching to the choir, Dr. Thomson, I
12 know -- and clearance requirements. And so those are
13 the protections. And if it's a larger system, then it
14 would be governed under a permit issued by the Ground
15 Water Quality Bureau. And if it discharges to surface
16 water, obviously the Surface Water Bureau would have
17 jurisdiction.

18 COMMISSIONER THOMSON: Thank you. Thank you.
19 I appreciate it.

20 I guess my concern is that state regulations
21 are sort of a minimum -- they establish a minimum level
22 of performance, and in an ONRW watershed -- let me just
23 ask your opinion -- your professional opinion, because
24 you have so much experience with this.

25 In a -- are the state criteria -- in your

1 opinion, do you think they are sufficiently protective
2 of the -- of the high quality of the water associated
3 with the Pecos and its tributaries as -- as currently
4 written, or would more stringent criteria be
5 appropriate?

6 MR. MC QUILLAN: Mr. Hearing Officer,
7 Commissioner Thomson, that's another excellent question.

8 I wrote some papers on this. And if the -- if
9 the minimum lot size requirement is met, which is a very
10 important parameter, depth to groundwater clearance --
11 if all those are met, and you're not in a fractured
12 bedrock situation or a karst, K-A-R-S-T, situation,
13 where you have like cavernous limestone, our -- our
14 monitoring of private domestic wells in areas with
15 septic systems suggest that the baseline is appropriate.

16 So if it's -- if it's a septic tank out -- up
17 in Dalton Canyon that's -- that meets all those
18 requirements and you're going to have fractured rock
19 in -- in the -- now, there is shallow groundwater up
20 there -- I would expect that the require -- that it
21 would be protected. But if you have too many of them --
22 and some of those lots are very tiny.

23 You know, Commissioner Dominguez asked about
24 those private holdings up there. They're -- my
25 understanding is they're on leases, and -- and some of

1 them, I believe, have been required to put in holding
2 tanks that don't discharge to the soil or to the
3 groundwater, because they're seasonal homes, and they
4 can't meet even the minimum requirements, much less more
5 stringent requirements.

6 So I think that the liquid waste program would
7 impose more stringent requirements on these systems on a
8 permit-by-permit basis when they need to do so. I --
9 one of the last things I did before I retired is I
10 taught a class for Department staff on hydrogeologic
11 vulnerability.

12 COMMISSIONER THOMSON: Thank you. That's a
13 very complete answer, and I appreciate it.

14 Thank you.

15 MR. MC QUILLAN: Yes, sir.

16 HEARING OFFICER CHAKALIAN: Commissioner
17 Velasquez?

18 COMMISSIONER VELASQUEZ: Thank you.

19 And, Mr. McQuillan, thank you for your
20 testimony.

21 Given your experience and background, personal
22 and professional, with the canyon, I'd like to get your
23 perspective on the following:

24 I believe, and I think there's a larger,
25 broader belief, that we are in a bit of a crisis in the

1 canyon in dealing with the by-product of use both
2 residential, commercial and outdoor recreation, and
3 dealing with that by-product both with liquid and solid
4 waste in and around this designated area -- the proposed
5 designated areas and throughout that recreational
6 portion of the canyon.

7 Can you provide more perspective on this
8 designation and how this will help drive NGOs,
9 nonprofits, state, federal and local communities to
10 better serve the needs of the canyon by creating this
11 foundation with -- with this ONRW designation?

12 MR. MC QUILLAN: Mr. Hearing Officer,
13 Commissioner Velasquez, I'm really glad you asked that
14 question, because the Upper Pecos Watershed Association
15 is one group that I pointed to throughout my career
16 as -- as a grassroots advocacy organization that
17 actually makes a difference in -- in the watershed.

18 You know, as you're probably aware, they --
19 they got EPA grant money to do channel reconstruction
20 and -- and create better habitats for trout and repair
21 some of the damage caused by mining.

22 Having said that, I think there are still
23 issues that the US Forest Service and the New Mexico
24 State Parks Division are dealing with. The increasing
25 use -- I know when I was up there a couple weeks ago

1 hiking, you know, they have vault toilets that don't
2 discharge to the ground. They're self-contained, and
3 they're pumped out periodically.

4 So I think that the -- the managing agencies
5 are aware of the overuse and the increasing burden of
6 waste and -- you know, and people littering and human
7 waste and all that, and taking -- that they will
8 eventually take all the appropriate steps that are
9 necessary. They -- they got hammered in -- the
10 campgrounds and areas got hammered in 2020 because of
11 COVID.

12 But if you look at like -- if you go to Mount
13 Rainier and you look at what they have done up there for
14 the really precious area that has been -- that's been
15 loved to death by hikers and backpackers, they have more
16 stringent requirements, and the further away you get
17 into the wilderness, away from the visitors center, the
18 less stringent it is.

19 So I personally have confidence in the Forest
20 Service and the State Parks people, the expertise they
21 have to do the right thing, but it's clearly -- the
22 overuse is clearly an issue that -- that needs to be
23 watched and addressed.

24 I hope that answer was responsive.

25 COMMISSIONER VELASQUEZ: Thank you.

1 HEARING OFFICER CHAKALIAN: Are there any
2 other Commissioners with cross-examination questions for
3 this witness?

4 Mr. McQuillan, would you like to excuse
5 yourself?

6 MR. MC QUILLAN: Are there members of the
7 public that would like to cross-examine me, Mr. Hearing
8 Officer?

9 HEARING OFFICER CHAKALIAN: Thank you for
10 doing my job for me.

11 Are there any -- are there any members of the
12 public?

13 Mr. McQuillan, thank you.

14 MR. MC QUILLAN: Permission to be excused.

15 HEARING OFFICER CHAKALIAN: Excellent.

16 MR. MC QUILLAN: Thank you.

17 HEARING OFFICER CHAKALIAN: As far as I
18 understand, today's hearing, the evidentiary record is
19 now closed, except we should check in to see whether
20 there are any other public commenters out there.

21 MS. JONES: Mr. Hearing Officer, I have two
22 names.

23 HEARING OFFICER CHAKALIAN: Wonderful.

24 MS. JONES: The first is Garrett VeneKlasen.

25 And, Garrett, if you could turn your camera

1 on, please.

2 MR. VENE KLASSEN: Can you hear me?

3 HEARING OFFICER CHAKALIAN: Spell your name,
4 please.

5 MR. VENE KLASSEN: First name is Garrett,
6 G-A-R-R-E-T-T, last name is VeneKlasen,
7 V-as-in-Victor-E-N-E-K-L-A-S-E-N.

8 HEARING OFFICER CHAKALIAN: And do you
9 represent anyone?

10 MR. VENE KLASSEN: I do. I work with -- work
11 for New Mexico (unintelligible and/or inaudible).

12 HEARING OFFICER CHAKALIAN: I'm sorry. I
13 didn't catch that.

14 That New Mexico what?

15 MR. VENE KLASSEN: Can I go ahead?

16 HEARING OFFICER CHAKALIAN: Not yet, sir.
17 Who do you represent?

18 MR. VENE KLASSEN: New Mexico Wild.

19 HEARING OFFICER CHAKALIAN: New Mexico Wild.
20 Thank you.

21 You're going to be sworn in now.

22 MR. VENE KLASSEN: Right.

23

24

25

1 GARRETT VENE KLASEN

2 having been first duly sworn or affirmed, gave
3 public comment as follows:

4 PUBLIC COMMENT

5 HEARING OFFICER CHAKALIAN: Please proceed.

6 MR. VENE KLASEN: Good afternoon, Mr. Chairman
7 and Members of the Commission.

8 Garrett VeneKlasen from New Mexico Wild.

9 I grew up in Santa Fe, born and raised in
10 Santa Fe. Some of my best childhood memories were
11 hunting and fishing and hiking and picking wild
12 mushrooms up in the Pecos, and it really is a big part
13 of my identity as a person.

14 I want to reiterate the vast amount of support
15 that we have seen for this designation. We have over
16 1,600 people that have engaged on this, three
17 resolutions, 28 letters, separate letters from myriad
18 elected officials from our Congressional delegates, all
19 the way down to County Commissioners, Mayor of Pecos.

20 I have seen one opposition -- last-minute
21 opposition. Again this is something that I think the
22 vast majority of New Mexicans and certainly the absolute
23 majority of people with -- that live within the area
24 really want to see this designation happen.

25 Again this is an heirloom for New Mexico and

1 the United States that is unique and special from its
2 cultural assets, its wildlife assets and especially from
3 a water security asset. There is nothing more important
4 to New Mexico and New Mexicans than to have water
5 security, and the Pecos is one of our biggest, most
6 vibrant watersheds.

7 Last, I wanted to kind of address this land
8 status issue. If you look at a land status map of the
9 in-holdings above Dalton Canyon, the number of private
10 in-holdings is a -- is a fairly small amount of acreage.
11 I think we need to acknowledge that.

12 I also wanted to especially highlight the fact
13 that there is not a single landowner within this
14 designation who has opposed this designation.

15 And I also want to highlight the fact that the
16 acequia commission, acequia parciantes are really in
17 support of this, and that is the lifeblood and center of
18 the agricultural community within that greater
19 designation. I think that we need to honor their wishes
20 and -- and this really again is the identity of New
21 Mexico, the -- the Pecos -- you know, the Pecos Pueblo
22 and the Hispano communities. They really want this, and
23 I think we need to honor their needs and their wishes on
24 this thing.

25 I think it's a no-brainer. This isn't going

1 to hurt anyone, it doesn't threaten anyone, and it
2 really ensures the cultural and ecological viability of
3 this massive area.

4 So, Commissioners, I urge you to support this.
5 We all love this place, and we really want to see this
6 designation happen.

7 So thank you for your time and consideration.

8 HEARING OFFICER CHAKALIAN: Thank you.

9 Pam?

10 MS. JONES: Yes.

11 Liliana Castillo, if you could turn your
12 camera on, please.

13 HEARING OFFICER CHAKALIAN: Would you spell
14 your name, please, after you unmute yourself?

15 MS. CASTILLO: Yes.

16 Hi. Thank you.

17 It's Liliana Castillo, that's L-I-L-I-A-N-A,
18 Castillo, C-A-S-T-I-L-L-O.

19 HEARING OFFICER CHAKALIAN: Ms. Arreguin?

20 LILIANA CASTILLO

21 having been first duly sworn or affirmed, gave
22 public comment as follows:

23 PUBLIC COMMENT

24 HEARING OFFICER CHAKALIAN: Please proceed.

25 MS. CASTILLO: Great.

1 Well, thank you so much for the opportunity to
2 give public comment.

3 I'm joining my fellow community members, local
4 governments, farmers, ranchers and water conservation
5 groups in urging the New Mexico Water Quality Control
6 Commission to protect 14 miles of the Pecos River and
7 162 miles of tributaries within the Pecos River
8 watershed as Outstanding National Resource Waters under
9 the Clean Water Act.

10 This designation will protect traditional
11 community water users and safeguard waterways from
12 degradation, development and transportation, waste
13 disposal, recreational overuse and impacts of climate
14 change, which is why there is such broad and
15 wide-ranging support in the Pecos community for
16 Outstanding Waters protection.

17 One of the things that I've always found
18 really inspiring about this effort is that it is
19 strictly community led. The -- as you can tell by who
20 the petitioners are and the -- the people who have been
21 giving you amazing testimony today. Many of them are
22 actually based in Pecos, which is amazing to me. They
23 are so passionate about this place, and I just want to
24 support everything that they have been doing.

25 We know that communities surrounding the Upper

1 Pecos watershed depend on clean water to support
2 agriculture, recreation and the local economy. But we
3 also know that protecting the Pecos as an out -- as
4 outstanding is not just good for farming and our health
5 and our well-being and for climate change, also good for
6 our bottom line as a state.

7 According to the US Department of Commerce's
8 Bureau of Economic Analysis, outdoor recreation
9 contributes \$2.4 billion to New Mexico's economy every
10 year. And this is, you know, the -- additionally a
11 bureau ranked the land of enchantment as second among
12 all states in compensation growth, showing that there's
13 a bright future for outdoor recreation, wages and
14 livelihood.

15 But that depends on New Mexico standing up and
16 being a leader to protect these special places that make
17 New Mexico New Mexico. So I urge you to vote yes.

18 Thank you.

19 THE REPORTER: Ms. Castillo, would you say
20 that number again, billion dollars?

21 MS. CASTILLO: \$2.4 billion.

22 THE REPORTER: Thank you.

23 HEARING OFFICER CHAKALIAN: Thank you.

24 Pam?

25 MS. JONES: No one else, sir.

1 HEARING OFFICER CHAKALIAN: Thank you.

2 Okay. Now, the way I see it and under the
3 rules, the parties have rested and there's no more
4 public comment. So the evidentiary record is closed.

5 And now we should move on to a discussion of
6 how we're going to handle the posthearing procedure.

7 Madam Chair?

8 CHAIR STRINGER: Thank you, Mr. Chakalian.

9 As I understand it, and I will definitely seek
10 Counsel Sanchez's help on this, but because the hearing
11 notice didn't explicitly state that a decision could be
12 made during today's proceedings, I think the best course
13 of action is to follow up with a Hearing Officer report
14 that can then be deliberated at the following regular
15 WQCC meeting.

16 So that was my original proposal, and it's
17 certainly open for discussion.

18 MR. SANCHEZ: Chair Stringer, this is Counsel
19 Sanchez.

20 I would wholeheartedly concur with how you
21 suggest this be done, and then we can set some
22 timelines.

23 We have a 60-day limit under -- if the
24 Commission will bear with me. Under 20.1.6.303C the
25 Commission has 60 days to reach its decision from either

1 the close of the record or the date of the Hearing
2 Officer's report.

3 So we don't get into the sort of time crunch
4 that we did with the Triennial Review, perhaps the
5 Hearing Officer report could be due 15 days following
6 today, and then an additional 15 days for the counsel
7 for the parties or counsel or the party pro se,
8 Mr. McQuillan, to submit any closing arguments, any
9 proposed statements of statements of reason, and we
10 could then set a date for deliberation by the
11 Commission.

12 HEARING OFFICER CHAKALIAN: Okay.

13 MR. SANCHEZ: Thank you.

14 HEARING OFFICER CHAKALIAN: I'm not sure if
15 you meant what you said, Counsel Sanchez, or if there
16 was an error there, but I couldn't have a Hearing
17 Officer's report ready in 15 days.

18 MR. SANCHEZ: I'm just trying to be sensitive
19 to the 60-day limit and so we don't land up having to
20 prepare the final statement of reasons and decisions at
21 the nth hour before the expiration of the 60 days
22 following deliberation by the Commission.

23 HEARING OFFICER CHAKALIAN: Okay. So the way
24 I read the rule, the 60 days doesn't start until my
25 final report is filed. So I'm not sure how the 60

1 days -- I'm not sure where the idea of 15 days comes in
2 to play. But I wouldn't be comfortable committing
3 myself to anything like that.

4 I believe that what we need to do at this
5 point is to get a transcript, first of all, and then the
6 parties have the opportunity to submit their posthearing
7 submissions to me that I can then prepare a Hearing
8 Officer report. And after I file it, a final version --
9 and we haven't talked about whether the parties would
10 have a comment period or not at this point. But once I
11 file the final report, then the 60 days, I think, would
12 begin.

13 So that's the way I read the rule, Counsel
14 Sanchez.

15 Am I getting something wrong?

16 MR. SANCHEZ: No, Hearing Officer Chakalian.
17 I looked at the rule as you were speaking, and the 60
18 days would in fact begin to run following either the
19 close of the record or in this case your filing of what
20 you're characterizing, I think, as your final Hearing
21 Officer's report.

22 HEARING OFFICER CHAKALIAN: Chair Stringer?

23 CHAIR STRINGER: I see that we have a couple
24 hands up. Shall we go to those comments before we
25 proceed, just to feed into the discussion.

1 Commissioner Dominguez.

2 THE REPORTER: I think you might be muted.

3 COMMISSIONER DOMINGUEZ: Thank you.

4 Most people prefer it that way.

5 I would agree with what the Hearing Officer
6 just brought up regarding the 60 days. I believe that's
7 what we've always operated under.

8 The second point I wanted to bring up was
9 currently under the Amended Scheduling Order there's
10 already some timelines set out within the scheduling
11 order. That would be under item number 8 within the
12 Amended Scheduling Order.

13 So does that -- the fact that we already have
14 a scheduling order, are we bound by that scheduling
15 order? That's more of a question. So I just wanted to
16 bring it to everyone's attention.

17 CHAIR STRINGER: And I see that Ms. Fox also
18 has a comment to make, as well.

19 Ms. Fox, please proceed.

20 MS. FOX: Thank you, Chair Stringer and
21 everybody else.

22 Just to -- I know, Commissioner Dominguez, you
23 didn't ask me this, but I'm going to try to answer your
24 question as best I can and then leave it to counsel who
25 is in a better position than I to answer.

1 But this is the Hearing Officer's Amended
2 Scheduling Order so he can change it. And so we're not
3 bound by this -- by that -- by that schedule.

4 One thing that we discussed at a prehearing
5 conference after we realized that the notice didn't have
6 provision for Commission deliberations after hearing was
7 trying to abbreviate the posthearing schedule to the
8 extent possible. From petitioners' perspective, we
9 would certainly like a decision sooner rather than
10 later.

11 And so, you know, anything that is agreeable
12 to the Hearing Officer and the Commission in terms of
13 abbreviating that posthearing schedule petitioners would
14 support. So that could include -- that could include
15 maybe decreasing the timelines for posthearing
16 submittals by the parties, which is contemplated.

17 That can include not having a Hearing
18 Officer's report since there's no opposition. Hearing
19 Officer's reports aren't always required in these kinds
20 of proceedings, I think especially if there's no
21 opposition.

22 Certainly petitioners would be amenable to
23 proposing a statement of reasons for review by counsel
24 and the Commission.

25 Those are some ideas if the Commission and the

1 Hearing Officer would want to in any way abbreviate the
2 posthearing proceedings, which are -- you know, they're
3 a little bit lengthy and cumbersome right now.

4 Thank you.

5 MR. SANCHEZ: Chair Stringer, if I may,
6 please.

7 CHAIR STRINGER: Please, Counsel.

8 MR. SANCHEZ: I would agree with Ms. Fox that
9 the authority of the Hearing Officer is delegated by the
10 Commission, and I think the Commission can certainly in
11 consultation with the Hearing Officer and the parties
12 abbreviate or change those -- those timelines.

13 And also, I would remind the Commission that
14 there is of record -- I understood Mrs. Tiffany Rivera
15 who represented the New Mexico Livestock Board to have
16 filed written comments in opposition to the petitioners'
17 proposal. So I think of record there is, in fact,
18 opposition.

19 Thank you.

20 CHAIR STRINGER: Go ahead, Ms. Fox.

21 Sorry. I'm not sure if the Hearing Officer is
22 supposed to call on people or if I am at this point
23 since we're still in the hearing.

24 But please proceed, Ms. Fox.

25 You're muted.

1 I can't hear you, Ms. Fox. I think you're
2 muted.

3 MS. FOX: Okay. I got it right now.

4 What I meant by no opposition was that there's
5 no opposition from a formal party, not that there's no
6 opposition from any of the 1,600 persons who have
7 participated in this proceeding, providing comment or
8 public comment. It is true that we know of at least one
9 opponent of those 1,600 people. But there's no --
10 significantly there's no opposition from a party.

11 CHAIR STRINGER: Thank you, Ms. Fox.

12 So I think it sounds like we want to get this
13 done and resolved as quickly as possible. We need to
14 wait for the transcript to be provided, and then perhaps
15 that's the point at which we adjust the schedule through
16 another conference with the Hearing Officer and get a
17 final date for submission of the sequence of events
18 leading up to the final Hearing Officer's report.

19 Is that correct?

20 HEARING OFFICER CHAKALIAN: The way I think --
21 I think the Commission has some options here, and those
22 options can be exercised not just today, but in the near
23 future, as well. It seems to me that, yes, we should
24 wait for a transcript.

25 So, Ms. Arreguin, how long do you think it

1 will take for a one-day transcript?

2 THE REPORTER: I can get it in a week.

3 HEARING OFFICER CHAKALIAN: That's marvelous.

4 Thank you.

5 Once that comes in, Pam will file a notice of
6 transcript, and I think the Commission can easily decide
7 whether or not it wants to expedite this either through
8 the omission of a Hearing Officer report or with a
9 Hearing Officer report. If the Commission wants a
10 Hearing Officer report, then I need to receive from the
11 parties their posthearing submissions.

12 Now, we did discuss in the prehearing
13 conferences that we had that it is -- it is contemplated
14 that there will be a joint posthearing submission
15 because everyone's on the same side, all the parties are
16 on the same side of this.

17 And I agree with Ms. Fox that if you don't
18 have any opposition then drafting a Hearing Officer
19 report would be a lot easier. Let's just say that. It
20 would be a lot easier than when you have conflicting
21 statements of reason, the way I did in the triennial.

22 So once I see the posthearing submissions, I
23 could report back to Chair Stringer on how quickly I
24 could get a Hearing Officer report out. I mean, I do
25 have other work that's going on right now, and I'm not

1 going to lower the standards of my work.

2 So if the Commission decides that they don't
3 need a report, that's a different story. But I'm happy
4 to do my job, and I can do it as quickly as I can
5 effectively do it.

6 But that's how -- that's how I see it, Chair
7 Stringer.

8 CHAIR STRINGER: Okay. Thank you.

9 Commissioner Dominguez, did you have a
10 comment?

11 COMMISSIONER DOMINGUEZ: Yeah, to try to help
12 move things forward, looking at the two avenues of no
13 Hearing Officer's report or a somewhat expedited report.
14 So let me -- let me drop back a little bit here
15 regarding the most recent Hearing Officer's report which
16 was covering the Triennial Review.

17 That was an extremely extensive hearing, with
18 a lot of moving parts, and a Hearing Officer did a great
19 job of encapsulating everything because of the
20 complexity of that one, including, you know, providing
21 proposed statement of reasons within each section
22 that -- that the Commission could work off of.

23 I -- as a suggestion, I don't think this needs
24 to be nearly to that level. This is -- I see it as very
25 much more simplistic. Partially just suggestion-wise,

1 if there is a Hearing Officer's report, it can -- can
2 easily cover the procedural matters of how the entire
3 process was conducted and likely forego giving us the
4 advantage of proposed statement of reasons, and the
5 Commission would lean on the petitioning party and the
6 Environment Department of what they submit as statements
7 of reasons, findings of fact, conclusions of law,
8 et cetera.

9 And not to take away from the Hearing
10 Officer's workload, but I think we could simplify the
11 process a little bit, kind of look in that direction,
12 and it would speed up things and maybe help out with the
13 big picture.

14 But that's just some suggestions there.

15 CHAIR STRINGER: Commissioner Brancard.

16 COMMISSIONER BRANCARD: I guess I -- I sort of
17 agree with Commissioner Dominguez. I think this is not
18 a very complicated rulemaking procedure here. There's
19 not a lot of contested facts or law.

20 And so either we go with a Hearing Officer's
21 report and nothing from the parties, or I say we take
22 proposed statements of reasons from the parties and we
23 don't need anything from the Hearing Officer, because
24 our counsel will prepare a statement of reasons
25 afterwards anyway, so why double it up.

1 I guess that would be my thought.

2 And really I think with the 60-day deadline
3 maybe what you need to do in some ways is to sort of
4 figure out when we're going to deliberate and then go
5 backwards.

6 CHAIR STRINGER: Yeah. I think that was the
7 biggest lesson learned from the triennial, was
8 controlling that timeline a little bit more.

9 Thank you, Commissioner Brancard.

10 Any further discussion from the Commissioners
11 on options?

12 Okay. Seeing none, I guess I've been working
13 under the assumption that the Hearing Officer's report
14 would be presented from the record and the scheduling
15 order, and I think it is a nice way to summarize it, and
16 it kind of gives us clear demarcation of setting the
17 time frame.

18 So I'm leaning toward if we could have that
19 Hearing Officer's report developed, and, like
20 Commissioner Brancard suggests, we sort of map that
21 timeline out based on when we think we would deliberate,
22 given your availability of when you can devote time to
23 it, Mr. Chakalian.

24 And so that leads to the next question, which
25 is when -- given the different steps that it's going to

1 take, the week to get the transcript, when do you think
2 we would have that final Hearing Officer report,
3 roughly, and then we can adjust the timeline based on
4 the regular meeting schedule?

5 HEARING OFFICER CHAKALIAN: Well, the rule
6 calls for a period of time for the parties to file their
7 posthearing submissions, and that would begin when the
8 notice of transcript is filed.

9 I think if the parties are going to file a
10 joint statement of reasons, you know, based on the
11 citations to the record, then I have literally one
12 document to deal with as opposed to multiple documents.
13 So that would -- that would speed things up right there.
14 I don't know how long it would take for the parties to
15 corroborate -- to collaborate on a joint posthearing
16 submission. That may add a little time since it's not
17 just a product of one mind, but more than one.

18 But once I receive that, I could get it out --
19 I could get the report out, oh, I don't know, maybe two
20 to three weeks after I receive the posthearing -- the
21 joint posthearing submission. So I think that would
22 speed things up for the Commission.

23 CHAIR STRINGER: Thank you.

24 May I ask the parties if they have a rough
25 estimate on how long they think it would take to produce

1 a joint statement of reasons?

2 MR. VERHEUL: Madam Chair, if I may, I know
3 we're contemplating a joint -- a joint statement of
4 reasons. Well, at least in the time that I've been with
5 the Department, we have not submitted joint statements
6 of reasons in these types of rulemakings before. And I
7 need to consult with my client a little bit further.

8 But I don't -- I think we should proceed under
9 the assumption that at least petitioners and the
10 Environment Department will most likely submit separate
11 proposed statements of reasons. However, I think the
12 testimony that's been submitted and heard today
13 indicates that we are unlikely to find any conflict
14 between those two documents.

15 CHAIR STRINGER: Ms. Fox?

16 MS. FOX: Thank you, Madam Chair.

17 We can file our proposed statement of reasons,
18 findings of fact, conclusions of law within 30 days
19 after filing of the transcript. We have no objection to
20 filing a joint statement of reasons. Whatever the
21 Environment Department wants to do is fine with us in
22 that regard. We would take the laboring or -- if they
23 do want to file jointly, but I can understand why they
24 might want to file separately.

25 HEARING OFFICER CHAKALIAN: I would like to

1 bring up one more thing, Chair Stringer, and that is in
2 the past there has been a comment period after the
3 Hearing Officer report is done. Maybe we can forego the
4 comment period, since I'll be compiling, you know,
5 information that doesn't conflict with other
6 information.

7 CHAIR STRINGER: Ms. Fox, are you responding
8 to that?

9 MS. FOX: Yes, I am, Madam Chair.

10 Petitioners have no objection to that. One
11 thing that I saw done recently in a proceeding is rather
12 than having a time period for filing exceptions, the
13 Hearing Officer said if there is anything that is like
14 incorrect versus something that you just disagree with,
15 you know, the parties have an opportunity to -- to, you
16 know, file corrections.

17 So petitioners could certainly forego with
18 filing exceptions, you know, unless there's some, you
19 know, misstatement of fact or correction that the
20 parties would like to make. You know, this is not as
21 complicated as the triennial, but it's still easy to get
22 stuff wrong.

23 CHAIR STRINGER: Yes. That triennial one was
24 rough, a lot of work to do in a very, very short time
25 frame for Counsel Sanchez and myself.

1 Okay. I wanted to just check with the third
2 party, Mr. McQuillan. He was on camera.

3 Mr. McQuillan, did you have any input into
4 this?

5 MR. MC QUILLAN: Thank you, Madam Chair.

6 I have no need to make any posthearing
7 submission, and I -- if the petitioners would entertain
8 the possibility of me co-signing their statement of
9 reasons, that would be good, too.

10 CHAIR STRINGER: Okay.

11 MS. FOX: We could certainly discuss that. I
12 don't think it would be a problem. We'll discuss that.
13 I have to check with clients, et cetera.

14 MR. MC QUILLAN: Sure.

15 CHAIR STRINGER: And then, Counsel Sanchez,
16 did you -- you had your hand up but took it down?

17 MR. SANCHEZ: Yes. Madam Chair, my question
18 was whether Mr. McQuillan tended to file any posthearing
19 submissions. He's answered that.

20 Thank you.

21 CHAIR STRINGER: Okay.

22 All right. So given this time frame, a week
23 to get the transcript and 30 days to -- for the parties
24 to file their statement of reasons, conclusions of fact,
25 et cetera, and then from that point -- how long did you

1 say, Mr. Chakalian? You said it's pretty simple after
2 that? Did you say two weeks, or did you give a time
3 frame for that?

4 I am just trying to calculate. It looks like
5 it's going to be July most likely before we can
6 deliberate given the sequence of events for us to have
7 the final report and then go into deliberations. It
8 looks like the realistic time frame was going to be the
9 July regular meeting.

10 HEARING OFFICER CHAKALIAN: I had suggested it
11 would take two to three weeks for me to produce my
12 report.

13 CHAIR STRINGER: Yeah. That's putting it
14 right around the time frame for the June regular
15 meeting.

16 So I think if we operate with that schedule in
17 mind, we can plan to deliberate at the July regular
18 meeting, and we'll have the final Hearing Officer report
19 in hand to do that.

20 Does that make sense to everyone? Any
21 objection or discussion on that time frame?

22 And then I don't know if you have to
23 memorialize this in a revised order -- or what's the
24 term -- not order -- scheduling order, or if we have to
25 do an amended one.

1 HEARING OFFICER CHAKALIAN: I don't believe I
2 do. The scheduling order contemplated a 30-day period
3 for posthearing submissions after the -- after the
4 filing of the notice of transcript. It gave me 45 days
5 because I wasn't sure what I'd be looking at. That was
6 agreed to by the parties. But in this case I would be
7 shortening my own time frame.

8 So I think that's under my discretion. I
9 don't think the -- I don't hear the Commission ordering
10 me to -- to shorten my time frame, I'm volunteering to
11 get it out within two to three weeks, and your 60-day
12 period doesn't begin until I file my report.

13 CHAIR STRINGER: Okay. So it sounds like
14 we've got a rough schedule, and we can forego the public
15 comment -- not -- is it public comment -- or the comment
16 on the -- the parties' comment unless we identify
17 something that's just incorrect in the final report, and
18 then we'll deliberate at the July meeting.

19 Okay?

20 I think we're good, then.

21 And now do I turn it back over to the Hearing
22 Officer to close the hearing?

23 HEARING OFFICER CHAKALIAN: I believe that I
24 closed the hearing. The evidentiary record has been
25 closed after the last public commenter.

1 So if there are no other matters, then this
2 hearing is adjourned.

3 CHAIR STRINGER: Okay.

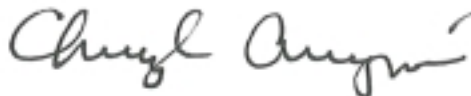
4 HEARING OFFICER CHAKALIAN: Thank you.

5 CHAIR STRINGER: Thank you.

6 (Proceedings adjourned at 2:38 p.m.)
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1 STATE OF NEW MEXICO)
2) ss.
3 COUNTY OF BERNALILLO)
4
5

6 I, CHERYL ARREGUIN, the officer before whom the
7 foregoing proceeding was taken, do hereby certify that
8 the witnesses whose testimony appears in the foregoing
9 transcript were duly sworn or affirmed; that I
10 personally recorded the testimony by machine shorthand;
11 that said transcript is a true record of the testimony
12 given by said witnesses; that I am neither attorney nor
13 counsel for, nor related to or employed by any of the
14 parties to the action in which this proceeding is taken,
15 and that I am not a relative or employee of any attorney
16 or counsel employed by the parties hereto or financially
17 interested in the action.

18 
19

20 NOTARY PUBLIC
21 CCR License Number: 21
Expires: 12/31/2022

22 My Commission Expires: 12/12/23
23
24
25