

**DRAFT**

**TAOS REGIONAL WATER PLAN PUBLIC WELFARE STATEMENT**

*Agua es Vida – Water is Life*

*Spanish Partidas, Law 3: “Las cosas que son de todas – son l’agre, sol, uvia, agua y el mar.”*

"What are the Things Which Belong in Common to All Creatures Living – The things which belong in common to all the living creatures of the world are the air, sun, rain, water, the sea, and its shores; for every living creature may use them according to his wants."

**I. INTRODUCTION:**

This Public Welfare Statement is intended to be a living document that reflects the wishes of the public in the Taos Region. Further, it is intended to be reviewed and revised as changing circumstances warrant.

## **II. DEFINITION OF THE PUBLIC WELFARE:**

### **A. Scope:**

The definition of the Public Welfare in this section and the individual criteria for determining whether proposed water appropriations or transfers are consistent with the Public Welfare are intended to apply to all appropriations and transfers from within the Taos Region that are subject to review by the New Mexico State Engineer. In order to better ensure that the review of the Public Welfare implications of such appropriations and transfers is well informed with regard to their local Public Welfare implications, a broad cross section of the public in the Taos Region expressed a strong desire that such transfers and appropriations be reviewed by a Regional Public Welfare Educational and Informational Committee.

This Public Welfare Statement is not to be read or applied in any way that would conflict with the authority or decisions of acequia commissions (section 73-2-21(E), NMSA, 1978, amended 2003) to approve or deny a change in point of diversion or place or purpose of use of a water right served or to be served by the acequia.

This Public Welfare Statement is not to be read or applied in any way that would conflict with or impinge on the sovereignty of either Taos Pueblo or Picuris Pueblo.

Residents of the Taos Region have expressed the view that the proposed Taos Water Rights Settlement Agreement (the "Agreement") is generally consistent with the Public Welfare of the Region. Accordingly, transfers and appropriations of water within the boundaries of the Taos Valley Stream System, as defined in the Agreement, that are proposed pursuant to the Agreement generally should be considered consistent with the Public Welfare of the Region.

### **B. Individual Criteria of the Public Welfare:**

#### **1. Cultural Protection:**

The residents of the Taos Region's multicultural communities have always had a deep cultural and spiritual connection with the local waters around which their communities were first organized and in relation to which these communities have developed their distinctive social and cultural fabric.

Our cultural heritage is one of the Taos Region's and the State's greatest assets. The diversity and mutual enrichment of the Region's Native American, Hispanic, and other cultures have been nurtured over centuries and millennia by the Region's scarce water resources.

The Taos Region's cultural wealth and diversity, especially its acequia-based communities, have made it a magnet for people from around the United States and the world. As such, they are an essential component of the Region's and State's economic and social vitality. Thus, the Region's multicultural communities must have their water base protected.

In order to sustain and enhance this cultural wealth, local water resources must be maintained in terms of water quality and available water supply sufficient to support the local communities and enable them to grow over the long term.

## **2. Agrarian Character:**

The traditional agrarian character of the Region's land and communities continues to be a vital part of the Taos Region's social and cultural fabric. Traditional land based communities keep water connected to the land and within the local watershed. Subsistence and pastoral agriculture have provided local sustainability for many years. Small scale farming and ranching continue to be a vital part of the local culture and economy, providing income and sustenance for many residents of the Region. Local agriculture provides food security for some of the most impoverished communities in the State. In order to maintain this local agrarian character, residents of the Region have a strong policy preference for maintaining the connection between land and water for agricultural uses. Acequias have existed in the Taos Region for hundreds of years; they are part of the historical environment, and contribute to its local sustainability.

## **3. Ecological Health: Vitality of Watersheds and Ecosystems**

The natural environment of the Taos Region, particularly the health of the Region's watersheds, is central to the physical, cultural, and spiritual health of local residents.

The watersheds of the Sangre de Cristo Mountains are the primary source of water for the Taos Water Planning Region. As such, they are the underpinning of the diversity of living things and the quality of the environment in the Taos Region and neighboring regions. The residents of the Taos Region have repeatedly affirmed that protecting and enhancing the long-term health and sustainability of these watersheds and the ecosystems they support is essential to the Public Welfare.

In addition, the health of the Region's watersheds and aquifers allows them to perform vital ecological services that sustain the human communities as well as the flora and fauna of the Region. Among the ecological services performed by our healthy watersheds are flood, drought, and fire mitigation, and the provision of wildlife and fish habitat. Acequias also are a vital part of the Taos Region's landscape and watersheds that contribute to the Region's ecological health.

## **4. Long-Term Economic Development Potential:**

The Taos Region has grown rapidly over the past few decades and clearly is on a path towards continued growth, in terms of both residential and commercial development. The protection of adequate local water supplies to support the Region's likely long-term growth and economic development, including increased residential, commercial, municipal, and industrial use, is essential to the Region's continued vitality.

## **5. Recreational Tourism:**

The stunning beauty of the Taos Region has long played a major role in the physical, cultural, and spiritual life of people residing in the Region's communities, and in making the Taos Region a destination for tourists. Recreational tourism that depends on adequate quantities and quality of water is a major, growing component of the Region's economy. Visitors from around the United States and the world flock to the Taos Region for such outdoor pursuits as skiing, snowshoeing, whitewater rafting, kayaking, fishing, birding, hiking, and hunting.

The Region's continued ability to attract and support these activities is vital to ensuring that the Region has an economically and socially healthy future. These recreational opportunities are directly dependent on the protection of our local waters, both in terms of quality and quantity.

## **6. Public Information:**

The water resources of the Taos Region bind the individual communities within the Region together and sustain them all. The viability of all communities in the Region depends on our limited, interconnected

local waters, which reflect the interconnectedness and interdependence of our communities.

The ability of local communities within the Taos Region to gather and share information concerning the water resources on which they depend is critical to our communities' ability to use and protect those waters effectively. Thus, the gathering and dissemination of high quality information about the capacity and condition of local water resources within the Region would significantly enhance the Public Welfare of the Region.

To achieve that goal, local and state entities should work together to obtain, share, and disseminate comprehensive, authoritative data concerning all water resources in the Taos Region. Further, a regional office, or water education center, should be established to gather this information and should be open continuously during regular business hours to make this information locally available to the public.

#### **7. Water Supply Management:**

Assessments of the balance between water supply and demand should be prepared for each watershed, subwatershed, and drainage basin within the Taos Region, as those hydrologic units are identified in Section 5.2.1 of the Taos Regional Water Plan. These assessments are needed in order to ensure that accurate evaluations can be made of the ecological and human needs in each watershed, subwatershed, and drainage basin in the Region, and of the potential impacts of a proposed transfer or appropriation on those needs. Hydrologic studies, aquifer mapping, and a comprehensive system of monitoring and measurement should be developed and implemented throughout the Region to accurately assess the water supply and demand in each watershed, subwatershed, and drainage basin within the Region.

Therefore, the Taos Regional Water Plan will incorporate by reference any existing assessments of the water supply and demand for each watershed, subwatershed, and drainage basin within the Taos Region. Further, all governmental entities and political subdivisions within the Region should cooperate in providing for such water supply and demand assessments to be completed as soon as possible and updated every five years thereafter.

The extent to which a proposed appropriation or transfer would conform to these assessments of water supply and demand, and the extent to which it would maintain the balance between water supply and demand should be given significant weight in evaluating the degree to which that appropriation or transfer would be consistent with the Public Welfare.

#### **8. Conservation:**

The Taos Region, like all of New Mexico, has limited water resources. In the interests of promoting the greatest Public Welfare to be derived from these scarce waters, an appropriation or transfer of water should only be considered consistent with the Public Welfare if it meets the criteria of the Conservation section of this Regional Water Plan.

#### **9. Conjunctive Management:**

In light of current levels of water use and growth trends in the Region and the rest of the State, groundwater and surface water resources within the Region should be managed conjunctively in order to prevent excessive surface water or groundwater diversions from depleting related surface water and groundwater resources. In the absence of conjunctive management, there is a significant risk that excessive diversions of surface water and/or groundwater cumulatively could lower the groundwater table to such an extent as to unduly negatively affect pre-existing wells and deplete surface flows in related stream systems. Such a pattern of water diversion would be to the detriment of the Public Welfare. Therefore, measures should be adopted by the appropriate governmental agencies or entities to

ensure that surface and ground water resources are managed conjunctively and diversions of surface water or groundwater should not be permitted where they are likely to have unreasonable negative impacts on related surface stream flows or pre-existing wells.

### **10. Minimizing Water Contamination:**

The contamination of surface water and groundwater resources and drinking water supplies from a variety of sources, including the proliferation of septic systems and nearby domestic wells, is a matter of considerable concern in the Taos Region. The better the water quality of all water resources in the Region, the greater the Public Welfare derived from the Region's water. Actions that would improve water quality in the Region are more likely to increase, than to diminish, the Public Welfare. By the same token, actions – including some transfers and appropriations of water – that would degrade water quality in the Region will tend to diminish the Public Welfare. The promotion of mutual domestic water consumer associations and community water systems as an alternative to domestic wells is one means of lessening the incidence of groundwater contamination. As a general matter, the consolidation of domestic well water rights into mutual domestic well water consumer associations and community water systems would tend to enhance the Public Welfare. Therefore, local governmental entities in the Region and the State Engineer should take all lawful actions to promote such processes. By the same token, the State Legislature should modify the statutory law of New Mexico to facilitate such processes.

*To be consistent with the Public Welfare, a proposed appropriation or transfer of water from within a watershed, subwatershed, or drainage basin in the Taos Region should not reduce the water supply or degrade water quality to such an extent that it jeopardizes: the continued viability of the Region's traditional communities; the long-term economic development of the Region and the subregion from which the water is proposed to be appropriated or transferred; the ecosystem of the watershed, subwatershed, or drainage basin from which the water is proposed to be appropriated or transferred; watershed or ecological restoration activities within the Region that have been identified through the Watershed Restoration Action Strategies (WRAS) process or any other process authorized by local, state or federal law; or any of the other values and standards contained in these Public Welfare criteria.*

## **II. IMPLEMENTATION**

During the four years of the Taos Regional Water Planning process many public meetings were held. In all of these meetings the vast majority of the public input was not only in favor of defining the Public Welfare in the terms set forth above, but also strongly in favor of implementing this local definition of the Public Welfare through a local review process. The overwhelming majority of the input received during those meetings called for the establishment of a local committee to review the potential effects of proposed transfers and appropriations under the criteria that comprise the local definition of Public Welfare. In response to this public input, such a local Public Welfare review committee and process was originally outlined as part of the Draft Taos Regional Water Plan. The proposed local Public Welfare review committee was intended to provide educational and informational input in order to put local governmental entities and the local public, and through them the State Engineer, in a more informed position regarding the implications of proposed water rights decisions.

Beginning in August of 2006 several entities within the Taos Region, including municipalities and water and sanitation districts, voiced objections to such a local Public Welfare review committee and process. These entities noted the importance and necessity of water transfers to their continued growth and development. They also expressed great concern over the potential for the proposed local review process to impose additional burdens and legal complications on the water transfer process.

Although meetings were held and revisions proposed to the Public Welfare Statement in an effort to

reconcile these two points of view, there ultimately remained a wide difference between those who called for such a local Public Welfare review process and those who objected to it.

Included below is a summary of an approach to implementation that reflects the suggestions and demands of the majority of the public who attended public meetings and participated in the planning process in the Taos Region. In all of those public meetings and in response to additional outreach efforts an overwhelming majority of the people who participated expressed a strong desire for some form of locally, or regionally, based implementation of the Public Welfare criteria that the public had identified and described. Residents from every subregion within the Taos Region stated repeatedly that they wanted some mechanism, or procedure, to be implemented by which local governmental entities and the local public within the Taos Region could systematically obtain information and provide input concerning the local Public Welfare implications of proposed appropriations and transfers, where State law requires that the Public Welfare implications of such appropriations and transfers be evaluated.

#### **A. The Need for Local Public Welfare and Conservation Input:**

The demand for more meaningful, locally informed, application of the Public Welfare criterion in New Mexico's water law stems from the widespread perception that the existing water rights decision-making process has failed to give meaning and effect to the Public Welfare criterion since that criterion was added to New Mexico water law by the Legislature in 1985. There are a number of well-known bases for this widespread view.

First, past State Engineer rulings have acknowledged that the Office of the State Engineer is ill-equipped to assess the local values, concerns, and priorities that make up the local Public Welfare. See *In re Application of El Prado Water and Sanitation District for Permit to Change Point of Diversion and Place and Purpose of Use*, File No. 057, 0932, 0933, at 9 (April 30, 1992); *In re Applications of Intel Corp. to Appropriate Underground Waters*, File No. RG-57125, RG-57125-S, RG-57125-S-2, at 14 (June 10, 1994).

The deficiencies in the OSE's ability to adequately address local, or regional, Public Welfare factors in water rights decisions is reflected by the calls in both the State Water Plan and the Regional Water Planning Handbook for regional input concerning those factors. The State Water Plan plainly acknowledges the need for regional water plans to provide as much substantive input as possible on the Public Welfare, and calls for such input from the regional water plans. See, State Water Plan § C.1 (2003) ("Public welfare has both regional and state contexts. The OSE and ISC believe the regional public welfare is best informed by reference to the individual water plans."); *id.*, App. C. (recommendations of Ad Hoc Committee on Regional Water Plans – State Water Plan), at III.B.3 (noting that State Water Plan Act requires regional water plans to "provide for . . . adequate review of . . . the effect of public welfare"). The Regional Water Planning Handbook also calls broadly for regional water plans to address and provide "substantive elements for use by the State Engineer in 'public welfare' and 'conservation' determinations in actions before the State Engineer within the regional planning area or affecting the area." Regional Water Planning Handbook, Pt. I, at 1 (1994).

In addition, the Ad Hoc Committee of Regional Water Plans and the State Water Plan has received feedback from representatives of regions that have completed their water plans expressing frustration with the failure of their plans to be sufficiently specific about what constitutes the Public Welfare and their plans' failure to provide for some form of local implementation of their Public Welfare Statements. In short, regional water plans without specific criteria or standards for defining and protecting the Public Welfare, and without some form of local implementation to give effect to the regional Public Welfare statement, have proven to be unsatisfactory.

## **B. Educational and Informational Committee:**

In response to the above, and as a distillation of the requests and recommendations repeatedly made by members of the public who attended planning meetings, the following approach was developed for the establishment and operation of a Regional Public Welfare and Conservation Educational and Informational Committee to implement the Public Welfare criteria described in this Statement.

This process is intended and designed to provide a more informed basis for: (1) the decisionmaking process of local governmental entities and members of the public regarding whether to protest a proposed appropriation or transfer; and (2) the State Engineer's decisionmaking process regarding whether a proposed appropriation or transfer is detrimental to the Public Welfare or contrary to the Conservation of Water. In order to better enable the State Engineer to conduct a fully informed, rationally grounded assessment of the Public Welfare and Conservation implications of proposed new water appropriations and transfers from within the Taos Region, it was suggested that local governmental entities within the Region should be encouraged to create a committee and process for obtaining and presenting educational and informational input concerning the local Public Welfare and Conservation implications of proposed appropriations and transfers. Specifically, members of the public in the Taos Region requested that local governmental entities and political subdivisions of the State be encouraged to establish and maintain such a Regional Public Welfare and Conservation Educational and Informational Committee (Educational and Informational Committee), or similar body.

This Educational and Informational Committee would have two purposes. The first would be to provide educational and informational input to local governmental entities and political subdivisions and the public within the Taos Region in order to enable those entities and people to make informed decisions about whether to protest a proposed appropriation or transfer on Public Welfare or Conservation grounds. The second would be to provide more thorough and precise information on those criteria to the State Engineer in such protests in order to better enable the State Engineer to meaningfully perform his statutorily mandated duty to evaluate the Public Welfare and Conservation implications of such a proposed appropriation or transfer.

To ensure that the Educational and Informational Committee is made aware of proposed appropriations and transfers from within the Taos Region in a timely fashion, local governmental entities and political subdivisions within the Region should, to the maximum extent of their statutory authority, require that a copy of every application to appropriate or transfer water from within the Region be submitted to the Educational and Informational Committee no later than the same date as it is filed with the State Engineer.

## **C. Establishment of Local Educational and Informational Committee:**

The governmental entities and political subdivisions within the Taos Region should exercise their statutory authority to provide for the formation of a Regional Public Welfare and Conservation Educational and Informational Committee, and should work cooperatively to obtain the necessary funding to support this Educational and Informational Committee's operations. The purpose and function of the Committee would be to evaluate the Public Welfare and Conservation implications of proposed water appropriations and transfers from within the Taos Region and to provide educational and informational input to local governmental entities and political subdivisions and the local public regarding the Public Welfare and Conservation implications of such appropriations and transfers.

## **D. Membership of Educational and Informational Committee:**

The Educational and Informational Committee would be composed of an odd number of members. The Committee would include representatives from each of the four subregions within the Taos Region

described in this Regional Water Plan. The Committee's membership would be as representative as possible of the full range of water interests and stakeholders in the Region.

The integrity and value of the Educational and Informational Committee's findings and recommendations would depend on the degree to which the Committee adhered to an evenhanded, disinterested, and apolitical approach. To achieve this goal, members of the Committee should be selected or elected in such a way as to ensure that the Committee is made up of residents of the Taos Region who are knowledgeable about water issues and committed to performing their duties in a nonpartisan, unbiased manner.

#### **E. Function of Educational and Informational Committee:**

The Educational and Informational Committee would review each application for a proposed appropriation or transfer of water from within the Taos Region. The Committee first would assess whether an appropriation or transfer appears likely to have significant Public Welfare or Conservation implications. To facilitate this assessment, the Committee or the local governmental entities who create the Committee could consider establishing a quantitative threshold beneath which a proposed transfer or appropriation generally will be considered de minimis and unlikely to present significant Public Welfare or Conservation concerns.

If the Committee's initial assessment were to indicate that a proposed appropriation or transfer raised significant Public Welfare or Conservation concerns, the Committee would evaluate the likely impact of the appropriation or transfer under each applicable Public Welfare and Conservation criterion set forth in this Regional Plan. Based on that evaluation, the Educational and Informational Committee would make findings as to the likely impact of the appropriation or transfer under each of those criteria and, balancing the implications under the various criteria, a finding as to the appropriation or transfer's likely overall Public Welfare and Conservation implications. The Committee would transmit these findings, along with its recommendation about the extent to which the appropriation or transfer should be considered consistent with the Public Welfare and Conservation of Water, to local governmental entities and the public in the Taos Region.

In evaluating the Public Welfare and Conservation implications of a proposed appropriation or transfer, the Committee would bear in mind the limits of the sustainable capacity of the Taos Region's surface water and groundwater resources.

In evaluating the Public Welfare and Conservation implications of a proposed appropriation or transfer, the Committee would consider the direct, indirect, and long-term effects of the proposed appropriation or transfer.

#### **F. Procedure:**

##### **1. Submission:**

To the extent permitted by state law, the local governmental entities and political subdivisions of the State within the Taos Region should require an applicant for a new appropriation or transfer from within the Taos Region to submit a copy of the application to the Regional Educational and Informational Committee no later than the same date as the application is submitted to the State Engineer.

##### **2. Notice and Comment:**

During the three-week notice period provided for by state law, the Committee would accept comment from the applicant and any interested member of the

public concerning the potential Public Welfare and Conservation impacts of the proposed appropriation or transfer.

**3. Timing:**

As soon as possible within the time provided under state law for protests to be filed, the Committee would make its findings and recommendations regarding an appropriation's or transfer's likely impact on the Public Welfare and Conservation of Water. Upon initial review, if a proposed appropriation or transfer were to raise significant Public Welfare or Conservation concerns, the Committee would provide the applicant with an opportunity to submit additional information before the Committee made its findings and recommendations.

After making its findings, the Committee would transmit them to the local governmental entities and political subdivisions within the Taos Region that had requested the Committee's input, the applicant, and the public. The Committee would do so in time to allow them to make an informed decision about whether to protest the appropriation or transfer on Public Welfare or Conservation grounds within the statutorily provided period.