

MEMORANDUM

DATE: July 27, 2011
TO: Interim Committee on Water and Natural Resources
FROM: Craig Roepke, ISC
SUBJECT: Update on the Gila Planning Process

On June 22, 2011, the New Mexico Interstate Stream Commission adopted criteria (see pages 4 through 6) for Tier-1 and Tier-2 evaluations of applications for using the water and funding available to New Mexico in the 2004 Arizona Water Settlements act (AWSA). The Commission also approved a schedule (see page 7) for Tier-1, Tier-2 evaluations and for final assessments of those proposals selected for further consideration by the Commission after final Tier-2 rankings. Where stakeholder consensus existed, that consensus is reflected in the criteria and process.

At stakeholder request, the criteria were simplified and reduced in number from earlier versions. Of note, some contentious economic criteria in previous drafts of Tier-2 criteria have been removed because of disputes among stakeholders over whether “cost-effectiveness” or “benefit/cost ratios” should be used as the operative economic metric. Some stakeholders suggested that asking for applicants to provide the information for either metric could result in biased calculations. The Commission will instead contract with qualified professionals to complete independent economic evaluations.

Please note that the Tier-1 and Tier-2 evaluation schedule is drafted to provide ample opportunity for stakeholder input with repetitive feedback loops and opportunities for reconsideration of evaluation panel rankings.

The proposed schedule calls for final Tier-2 evaluations and Commission action to be completed in March, 2012. The AWSA requires notice to the Secretary of Interior by December 31, 2014. It is necessary the Commission make final selection of projects or activities by mid-2014. The remaining six months will be used to garner important legislative, agency, public, and federal input, and for Commission modification of selections as appropriate. As a result, the time for comprehensive and substantive technical, legal, environmental, and economic assessment of the Tier-2 proposals selected by the Commission will be limited.

Tier-1 evaluations are currently ongoing of more than forty stakeholder proposals. Tier-2 will begin in October of this year and be completed by March of 2012. The full schedule with all steps and stakeholder feedback loops is attached. The Commission has always sought a regional consensus and will continue to do so. Because of the 2014 deadline in the AWSA, the Commission will have to make a decision even if consensus cannot be attained.

The Commission has received a number of robot emails expressing concern over the transparency and fairness of the evaluation process. With the exception of Silver City, we have also received emails, letters, and resolutions from every local government in the region expressing full support for the evaluation process the Commission adopted. I would like to very briefly discuss the concerns we heard and the overall process.

Prior to adopting the evaluation process, stakeholders and the ISC looked at a number of processes, including those used by the foundations that grant money to some of the environmental non-governmental organizations that have criticized the adopted process. All of those grantors employ closed evaluations by internal personnel that directly result in final selections. There were no provisions for public involvement, applicant review, independent observers, or outside evaluators. Although these foundations grant private funds, their closed evaluation processes are typical of state and federal processes. Though not formal evaluation processes, some federal initiatives such as Landscape Conservation Coalitions allow stakeholders to recommend how moneys that have already been allocated to a coalition be divided among the coalition. We had hoped the Southwest New Mexico Stakeholder Group would provide similar consensus recommendations for projects to the Commission, but that did not occur.

Many emails demanded public presence during the deliberations of the evaluation panel. Deliberations among evaluators can often become spirited. Further, rather than the standard process of using only internal evaluators, the Commission chose to invite representatives to serve on the panel from the New Mexico Environment Department; the Energy, Minerals, and Natural Resources Department; the New Mexico Department of Game and Fish; and Office of the State Engineer. The panel members bring diverse viewpoints and expertise and experience in the critical areas of conservation, hydrology, water infrastructure, ecology, and watershed restoration and management.

If candid professional debate is to occur, it's critical that the panel not be subjected to an affected party or interested public scrutinizing their every move or seeking to influence them. Application evaluations must be solely on the merits and not become popularity contests. If the panel is not secluded, rankings could easily be tainted and the entire process subject to claims of bias and to litigation.

An often-expressed concern was that the process be transparent and unbiased. The evaluation process adopted by the Commission employs elements, suggested by stakeholders, that are common to the selection processes of the NM Water Trust Board and the US Economic Development Administration: a two-tier evaluation process that first determines eligibility and applicability, and a second tier that assesses technical, legal, economic, cultural, and ecologic merit, etc. In each tier, the process includes preliminary review and reconsideration feedback loops that afford the applicants and the public ample opportunity to review the evaluation panel's work and thinking.

There is also an independent observer present during all panel deliberations. The observer was chosen by consensus of all stakeholders, and his charge is to report to the stakeholders and applicants whether the evaluation panel's deliberations are conducted in a fair and unbiased manner. The observer provides an element of transparency not present in other state evaluation processes.

To enhance communication with stakeholders throughout the planning process, the Commission approved funding for an interactive website that is open to the public. We will post all Commission actions, activities, data, work plans, reports, and studies, etc. on that website. The public may comment and their comments will be posted on the site along with responses from the Commission staff when appropriate. In addition, the Commission approved quarterly meetings open to the public where progress reports will be presented and public input captured. The Commission approved hiring a professional facilitator for those meetings.

Another concern was that criteria scoring favored diversion projects over conservation. On June 22, 2011, in an open public meeting in Silver City, the Interstate Stream Commission adopted Tier-2 criteria and scoring. Those criteria are posted at http://www.ose.state.nm.us/isc_colorado_gila_sanfran_committee.html. There is no distinction between diversion projects and conservation, nor is there any bias for diversion projects or against alternatives such as conservation. In fact, a conservation proposal that would increase supply by 1,250 acre-feet would garner the same number of points (500) as a diversion/storage project that would harvest 10,000 acre-feet. If anything, the scoring could be seen to favor conservation over diversion.

Importantly, the Interstate Stream Commission will arrive at any decision only in an open public meeting with ample opportunity for public and stakeholder comment. I cannot speak for the Commission, but I have always found that public input weighs heavily in their decisions.

In 2004, the Commission formally adopted a policy that mandates full consideration of the unique and valuable Gila ecology, consideration of present and future demand, and the best available science. That policy can also be found at the website listed above. In the spirit of that policy, we've gone far beyond what's required in order to provide a fair, unbiased, and transparent process while still honoring the integrity of evaluations.

The Commission has received a number of IPRA requests from the Gila Conservation Coalition asking for a huge number of documents and we have provided all relevant documents to the Coalition. Unfortunately, the Coalition has misinterpreted some of those documents as demonstrating a pre-determined outcome by the Commission. Please let me categorically assure the Committee that no such choice or even preference exists within the Commission or its staff. The Commission has always felt that the best and most viable projects to meet the needs of all the interests of Southwest New Mexico would come from the citizens in the region. The over forty applications we have received cover an extensive range from installation of low-flow shower heads to main stem dams. The evaluation panel and the Commission will thoroughly and impartially evaluate each.

TIER-1 CRITERIA

Tier-1 are designed to assess if the application meets the basic requirements in the 2004 Arizona Water Settlements Act (A and B) and in the ISC Gila Policy (C and D).

- A. **State whether the proposal is for the “New Mexico Unit,” a “water utilization alternative,” or both.** A “New Mexico Unit” is a project or activity that will develop additional water from the Gila basin above that allocated to New Mexico prior to the 2004 AWSA and require the Secretary of the Interior to exchange CAP water for any additional depletions in New Mexico. A “water utilization alternative” is a project or activity that does not develop additional water from the Gila basin above that allocated to New Mexico prior to the 2004 AWSA or does not require exchange of CAP water for additional depletions by New Mexico in the Gila basin. (see Exhibit A. **Interstate Stream Commission Gila Policy Statement, September 2004, and 2004 Arizona Water Settlements Act, Section 212 (i)**)

- B. **Describe how the proposal will meet a “water supply demand” in the Southwest New Mexico Water Planning Region, comprised of Catron, Grant, Hidalgo and Luna Counties.** The 2004 AWSA requires a “New Mexico Unit,” a “water utilization alternative,” or both to meet a water supply demand in the Southwest New Mexico Water Planning Region. The proposal must identify the demand that will be met and how the proposal will meet the demand identified. (see Exhibit A. **Interstate Stream Commission Gila Policy Statement, September 2004, and 2004 Arizona Water Settlements Act, Section 212 (i)**)

- C. **Describe how the proposal considers the Gila environment and describe how any negative impacts might be mitigated.** The ISC Gila Policy requires full consideration of the Gila environment. If the proposal impacts the Gila environment, the proposal must describe the impact, whether negative or positive, or both. The proposal must indicate how negative impacts are to be mitigated. (see Exhibit A. **Interstate Stream Commission Gila Policy Statement, September 2004, and 2004 Arizona Water Settlements Act, Section 212 (i)**)

- D. **Describe how the proposal considers the historic uses of and future demands for water in the Southwest New Mexico Water Planning Region and the traditions, cultures and customs affecting those uses.** The proposal must demonstrate how it conforms to the ISC Gila Policy to fully consider historic uses of and future demands for water in the Basin and the traditions, cultures and customs affecting those uses. Describe any impacts on historic uses of and future demands for water in the Basin and the traditions, cultures and customs affecting those uses, whether negative or positive, or both. The proposal must indicate how the negative impacts are to be mitigated. (see Exhibit A. **Interstate Stream Commission Gila Policy Statement, September 2004, and 2004 Arizona Water Settlements Act, Section 212 (i)**)

**DRAFT TIER-2 CRITERIA FOR A NM UNIT OR A WATER UTILIZATION
ALTERNATIVE [1010 total points possible]**

1. [570] If the proposal would extend the water supply through conservation, or increase the supply through development of new water,
 - a. Describe the location and verify the ownership of and legal access to lands related to the proposal. [0 to 30 points]
 - b. Identify the source of the water to be put to use. [0 to 10 points]
 - c. Describe and quantify whether and how the proposal would extend the water supply through conservation, or increase the supply through development of new water in the Southwest Planning Region. [4 points for each 10 AF up to 500 points]
 - d. Demonstrate how the proposal would meet AWSA and CUFA requirements. [up to 30 points] (see www.AWSAplanning.com for AWSA and CUFA documents)

2. [40] Describe the proposal and its technical viability.
 - a. Include any (or reference publically-available) technical and engineering studies completed and demonstrate how these studies support the proposal. [up to 20 points]
 - b. Include any (or reference publicly-available) hydrologic, ecologic, or geotechnical studies completed and demonstrate how information included in these studies specifically supports or detracts from the proposal. [up to 20 points]

3. [40] Quantify estimated costs.
 - a. Quantify the proposal's estimated costs, including planning, design, and/or construction, and administration or oversight. [up to 10 points]
 - b. If applicable, quantify the proposed project's on-going administrative, operational, and maintenance costs. [up to 10 points]
 - c. Describe environmental compliance activities, and quantify the costs for environmental mitigation and restoration related to the proposal. [up to 10 points]
 - d. Quantify the AWSA funding sought for the proposal and for the pendency of the proposed activity's or project's duration. [up to 10 points]

4. [40] If proposal impacts, beneficially or adversely, the environment of the Southwest Planning Region, the Gila River, its tributaries or associated riparian corridors, use the best available science to:
 - a. Describe and quantify how the proposal might impact the project site and environment, particularly state and federally-listed species. [up to 10 points]
 - b. Describe and quantify the proposal's efforts to mitigate possible adverse impacts on the environment, particularly riparian areas and state and federally-listed species in the Gila Basin and at the specific location of the proposal. [up to 10 points]
 - c. Describe and quantify how the proposal may benefit the environment, particularly riparian areas and state and federally-listed species in the Gila Basin and at the specific location of the proposal. [up to 10 points]
 - d. List any environmental statutes, rules, or regulations that may apply to the proposal, and demonstrate how the proposal implementation will comply with such laws, rules or regulations. [up to 10 points]

5. [70] Describe any economic or cost analysis information and data for the proposal:
 - a. Quantify estimated economic benefits including environmental, recreation, value of water itself, value of the water to the regional economy, increased economic

- growth, protection against loss of jobs, agriculture, ranching, local economic sustainability or growth, or other. [up to 10 points]
- b. Quantify estimated costs including planning, design, and/or construction, environmental compliance, operation, maintenance, repair, and administrative costs or other. [10]
 - c. Identify the source of local contributions and demonstrate the commitment and ability to pay any local cost-share for project proposal, including any applicable exchange costs [1 point for every % of project cost to be borne by local sponsor up to 50 points]
6. [120] Describe how the proposal addresses the needs of a particular group or groups or interests on the issues of
- a. Historic uses, traditions, cultures, and customs. [up to 10 points]
 - b. Current and future demands for water in the Southwest Planning Region. [up to 20 points]
 - c. Flood control.[up to 20 points]
 - d. Fire protection, prevention, or suppression. [up to 20 points]
 - e. Recreation. [up to 20 points]
 - f. Environmental protection and/or enhancement. [up to 20 points]
 - g. Any others. [up to 10 points]
7. [40] List those supporting the application, including federal, state, and local government entities; Indian nations, tribes or pueblos; irrigation or conservation districts; non-profit organizations; and other entities. Provide letters or resolutions of support for the application. [up to 40 points]
8. [40] Describe whether the proposal would benefit one or more than one of the counties in the Southwest New Mexico Planning Region – Catron, Grant, Hidalgo, and/or Luna Counties. [10 points/county up to 40 points]
9. [50] Describe whether the proposal would support economic growth or benefit one or more than one of the following interests in the Southwest New Mexico Planning Region – agricultural, ranching, municipal, recreational, or other (specify). [10 points/interest up to 50 points]

PLANNING SCHEDULE

<u>Date</u>	<u>Action</u>
March 23, 2011:	Commission Approval of process and criteria
May 1, 2011:	Submission of preliminary Tier-1 proposals for review
June 1, 2011:	Review and return of preliminary Tier-1 proposals
June 30, 2011:	Final Tier-1 submission deadline
July 30, 2011:	Evaluation panel review and ranking of Tier-1 proposals complete
August 6, 2011:	Request for reconsideration of evaluation panel rankings
August 22, 2011:	Response to request for reconsideration
August 29, 2011:	Evaluation panel submission to Commission of ranking of Tier-1 proposals
September 28, 2011:	Commission action on Tier-1 proposals
October 31, 2011:	Submission of preliminary proposals for Tier-2 review
November 30, 2011:	Return of preliminary proposals and Tier-2 review feedback
December 14, 2011:	Final Tier-2 submission deadline
January 13, 2012:	Evaluation panel review and Tier-2 ranking of proposals complete
January 20, 2012:	Request for reconsideration of Tier-2 rankings
February 3, 2012:	Response to request for reconsideration
February 6, 2012:	Evaluation panel submission to Commission of Tier-2 ranking of proposals
February 29, 2012:	Commission selection from Tier-2 proposals
March 2012:	Development of scopes of work (SOW's) for further economic, engineering, ecologic, and hydrologic studies and analyses.
April 2012:	Public comment on SOW's via public website.
April 2012:	Selection of consultants for further economic, engineering, ecologic, and hydrologic studies and analyses.
May 2012:	Begin engineering, economic, ecologic, and hydrologic studies.
As Available	Post assessment progress, results, and public comment on public website.
Quarterly	Public presentations of ongoing engineering, economic, ecologic, and hydrologic studies.
April 2014:	Completion of assessments and studies
April 2014:	Commission review of assessments and studies
May 2014:	Commission selection of final projects and/or activities
May - November 2014:	Public comment on Commission selections
December 2014:	Notice to the Secretary of the Interior