

**DRAFT**

TITLE 19                   NATURAL RESOURCES AND WILDLIFE  
CHAPTER 25               ADMINISTRATION AND USE OF WATER – GENERAL  
                                  PROVISIONS  
PART                       STRATEGIC WATER RESERVE

ISSUING AGENCY: Interstate Stream Commission

PREFACE: These regulations are written pursuant to NMSA 1978 Section 72-14-\_\_ , authorizing the Interstate Stream Commission to establish a strategic water reserve and requiring the promulgation of rules in conformity therewith.

SCOPE: These regulations will assist the interstate stream commission in implementing the strategic water reserve and in managing water and water rights held for the strategic water reserve.

STATUTORY AUTHORITY: [H.B. 195 from the 2005 Legislative Session to be codified at Chapter 72, Article 14]

DURATION: Permanent.

EFFECTIVE DATE: [upon promulgation by the ISC]

OBJECTIVE: These regulations will ensure that water and water rights acquired for the strategic water reserve are used only for the purposes of the reserve, that adequate public notice exists in each affected area for the acquisition or disposal of water rights and that the procedures for the acquisition of water and water rights for the strategic water reserve comply with the state engineer transfer procedures.

DEFINITIONS: Unless defined below, or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meanings.

A.     Water rights: Valid existing surface or groundwater rights that have sufficient seniority and a consistent, historic beneficial use to effectively contribute to the purpose of the strategic water reserve. As used herein, water rights does not include water rights served or owned by an acequia or community ditch established pursuant to Chapter 73, Articles 2 and 3 NMSA 1978.

LIBERAL CONSTRUCTION: These regulations shall be liberally construed to carry out their intended purpose.

IMPLEMENTATION OF STRATEGIC WATER RESERVE – RIVER REACH OR BASIN PRIORITIES:

A. On or before January 1st of each year, the Interstate Stream Commission, after consultation with the state engineer, and the attorney general, shall designate river reach or ground water basin priorities for the strategic water reserve and for the acquisition of water or water rights and storage rights for the reserve. In establishing such priorities, the commission shall consider:

1. The urgency of need for water or water rights to be held in the strategic water reserve in a river reach or basin.
2. The availability of water rights for sale or lease in the river reach or basin and/or whether storage exists for such water.
3. The cost, location and seniority of the water or water rights in the river reach or basin.
4. Whether and to what extent water rights to be purchased or leased will assist the state in complying with its interstate stream compacts or court decrees or will assist the state in managing its waters for the benefit of threatened or endangered aquatic or obligate riparian species or avoid additional listings of species.
5. Whether water or water rights are available by donation.

B. The Interstate Stream Commission shall publish its designated river reach or ground water basin priorities in newspapers of general circulation throughout the state. In addition, the Interstate Stream Commission shall publish its designated river reach or ground water basin priorities on its website.

**IMPLEMENTATION OF STRATEGIC WATER RESERVE –**  
**PRIORITIZATION WITHIN RIVER REACH OR BASINS:** Consistent with [statute], for each priority river reach or ground water basin, the Interstate Stream Commission shall establish additional prioritization in coordination with the governing bodies of each Indian nation, tribe, pueblo, board of county commissioners, municipality, special district established pursuant to Chapter 73 NMSA 1978, soil and water conservation district, water authority and water planning region within each affected river reach or ground water basin. The Interstate Stream Commission shall request comments and suggestions from each such entity as to the prioritization of the acquisition of water or water rights within each priority river reach or ground water basin. Such comments and suggestions shall be submitted in writing to the interstate stream commission within thirty days or shall be presented at a meeting of the Interstate Stream Commission scheduled for such purpose.

**ACQUISITION OF WATER OR WATER RIGHTS:** Consistent with its prioritizations, the Interstate Stream Commission shall acquire water or water rights from willing sellers or lessors. The commission shall acquire water or water rights at a price no higher than appraised market value, based upon the best available information and considering the seniority and the consistent historic beneficial use of the water or water rights. The Interstate Stream Commission may acquire water or water rights by donation at any time if the water rights to be acquired meet the requirements of [the SWR statute]

and these regulations. Acquisitions shall be contingent upon a successful transfer of the water rights to the Interstate Stream Commission pursuant to the procedures for transfer of water rights established by the state engineer. The Interstate Stream Commission shall not purchase or lease water or water rights that will result in an increase in net depletions in the affected river reach or that will create cumulative adverse impacts on existing water users or delivery systems. The Interstate Stream Commission shall not acquire water or water rights that are served by an irrigation district established pursuant to Chapter 73, Article 10 NMSA 1978, except through a contractual arrangement with the district board of directors or the Interstate Stream Commission may establish a special water users association pursuant to NMSA 1978, 73-10-48. If the Interstate Stream Commission acquires water or water rights from a member of an irrigation or conservancy district established pursuant to Chapter 73 NMSA 1978, the Interstate Stream Commission shall utilize funds from the strategic water reserve to pay the annual assessment to the district that would accrue to the district absent the transaction.

**APPLICATION FOR PERMIT WITH THE STATE ENGINEER:** All acquisitions of water or water rights by the commission for the strategic water reserve are subject to approval by the state engineer and shall comply with all state engineer rules and regulations governing surface and ground water transfer applications.

**MANAGEMENT OF WATER:**

A. The Interstate Stream Commission shall manage water and water rights within the strategic water reserve in order to assist the state in complying with its interstate compacts and court decrees or to assist the state and water users in water management efforts for the benefit of threatened or endangered species or in a program intended to avoid additional listings of species.

B. If water or water rights are purchased, leased or acquired through donation to assist the state and water users in water management efforts for the benefit of threatened or endangered species or in connection with a program intended to avoid additional listings of species, the Interstate Stream Commission shall manage such water or water rights in conjunction with collaborative programs or processes where they exist.

C. Water or water rights acquired for the strategic water reserve shall remain in their river reach or ground water basin of origin.

**ADMINISTRATIVE COSTS:** The Interstate Stream Commission shall determine annually its administrative costs associated with the strategic water reserve and consistent with [statute cite], such costs shall be paid for from fund received for the strategic water reserve.

**DISPOSAL OF WATER RIGHTS:** The Interstate Stream Commission may sell or lease water or water rights from the strategic water reserve only upon a finding by the commission that such water or water rights are no longer necessary for the reserve and only at a price no less than appraised market value. The Interstate Stream Commission

may lease water or water rights from the strategic water reserve to the United States but shall not sell water rights from the strategic water reserve to the United States. The Interstate Stream Commission shall utilize proceeds from the leasing of water rights from the strategic water reserve for carrying out the purposes of the strategic water reserve.

ANNUAL LEGISLATIVE REPORT: On or before December 15 of each year, the Interstate Stream Commission shall report to the appropriate committee of the legislature on the status of the strategic water reserve.