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Commissioner Sharon Salazar Hickey, Chair
Commissioner Jimmy Bates
Commissioner Gail Cramer
Commissioner Roberta Salazar Henry
Commissioner Tirzio Lopez
Commissioner Jeremy Vesbach
c/o Office of the Director
New Mexico Department of Game & Fish
P. O. Box 25112
Santa Fe, NM 87504

Dear Madam Chair and State Game Commissioners:

I am writing as a concerned New Mexican to submit comments on Agenda Item Number 6 as listed in the public notice posted June 3, 2021 for the June 18, 2021 Commission meeting. All of my comments refer equally to all five applications up for consideration under this agenda topic, namely Rule 19.31.22.11, Applications for Landowner Certification of Non-Navigable Water, Action Items A-E. I will keep my comments brief, as I know you have many to review.

The best and most ethical thing this Commission can do is vote “no” on these five applications at the June 18, 2021 hearings. There are too many well-documented outstanding unanswered serious legal questions about the validity of Rule 19.31.22, not the least of which is constitutionality under Section 2, Article 16 of the New Mexico State Constitution. To approve any additional applications under these equivocal circumstances would be to extend harm to all parties involved, when we all know there is a case on the seminal issue pending in the New Mexico Supreme Court. This pending court decision could possibly go either way, is totally unknown at this time, and no one knows who (which side) will benefit.

The current applicants have the remedy of appeal to District Court under 19.31.22.12, whereas other interested parties and citizens of New Mexico do not. Therefore, I respectfully ask you to let this issue go to the courts for proper adjudication. It is widely held that the only forum in which this matter will be resolved is in the courts. Mr. Marco E. Gonzales, attorney for all the

applicants, stated as much to all in the room at a Game Commission meeting in 2019. It's a matter of Commission record. Likewise, when I was Chair of this same Game Commission in 2019, in a conversation with Governor Michelle Lujan Grisham in her office about Rule 19.31.22 she said the same thing to me....this will only be settled by the courts. We all know this is true, so I ask you to rightfully let it play out in the courts. Consider this: **there is nothing to be lost by taking this route.** And, conversely, there is nothing to be gained by any party by approving these applications, knowing full well that doing so will not end or affect the litigation, especially regarding constitutionality, that will ultimately determine the outcomes.

One last point to support my request, in the US District Court order (Case 1:20-cv-0047-SCY-KK; 03/09/21) issued by US Magistrate Judge Steve Yarbrough, he writes: *“To be clear, the Court is not requiring the Commission to approve Plaintiffs’ applications. Under the regulations, the Commission can accept or reject the director’s recommendation, or can ‘take such other final action as necessary to resolve the application.’ 19.31.22.11(G) NMAC. The Commission, **therefore, has discretion under the regulations as to the outcome of the decision** (emphasis added).”* [see page 13 of decision] Hence, Judge Yarbrough clearly says the Commission has decision space in this application review process. There should be no foredrawn conclusions, as some insist, about the opportunity for Commissioners to exercise their judgment in approving or denying these applications.

Other concerned sportswomen, sportsmen, floaters/paddlers, outdoor enthusiasts and citizens of New Mexico who oppose the flawed concepts in Rule 19.31.22 have laid out many arguments and facts in the well-developed comments they submitted, which I support, including the clearly stated legal points submitted by New Mexico US Senator Martin Heinrich. I will not repeat those arguments and facts here.

I will conclude my remarks by asking each Commissioner to consider my comments in good faith, to hold the natural resources of our state including our public waters in the Public Trust for all New Mexicans, and to carefully consider the future impacts of your decisions on this matter.

Thank you very much for the opportunity to comment,

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