

1-1-2013

State and Regional Water Planning

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Recommended Citation

Buynak, Brigette; Susan Kelly; and Sarah Armstrong. "State and Regional Water Planning." *Water Matters!* 2015, 1 (2015): 7-1-7-9. https://digitalrepository.unm.edu/utton_watermatters/vol2015/iss1/12

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State and Regional Water Planning in New Mexico

State Water Planning

A statewide water planning effort was initiated by the New Mexico legislature in the 2003 session. The Interstate Stream Commission (ISC), in collaboration with the Office of the State Engineer (OSE) and the Water Trust Board, was tasked with preparing and implementing a comprehensive state water plan. Regional water planning had begun much earlier, prompted by a lawsuit that El Paso filed against New Mexico in 1983, *El Paso v. Reynolds*.

The State Water Plan Act of 2003 (Act) was intended to promote stewardship of the state’s water resources and to establish clear policies and strategies for management of the state’s water. The agencies involved in water planning and management were faced with a daunting challenge in addressing the legislative goals. On top of that, the administration announced an intention to complete the plan within a one-year time frame. The legislative goals reflect the need for state water planning to be a major, continuing work program for the State of New Mexico water agencies. Given the current level of funding, the ISC is struggling to fulfill its planning obligations.

“New Mexico’s challenge is to balance a short water supply with the need to grow, yet preserve the environment and our traditions. The regional water plans, which in turn set the stage for the state-wide plan, will help us get there.”

Senator Dede Feldman,
New Mexico State
Legislature (2008)

“It’s important that when we have supply that won’t meet unlimited demand, that we have a plan.”

Norm Guame, retired water manager quoted in “State Making New Plan for Water,” by John Fleck, *Albuquerque Journal*, December 15, 2013

State Water Plan Legislative Goals

- Inventory the quantity and quality of water supply under a range of conditions; inventory population and water demand projections
- Include water budgets for the state as a whole and for the major river basins and aquifers
- Develop water conservation, reuse, and recycling strategies and promote non-forfeiture of water rights
- Include a drought management plan to address and prevent drought emergencies
- Recognize the relationship between water availability and land-use decisions
- Promote river and watershed restoration
- Consider policies that balance the protection of culture and the environment with economic health, while providing for efficient transfers of water
- Promote coordination among all levels of government
- Integrate the regional water plans into the State Water Plan
- Integrate plans of water supply purveyors with State Water Plan policies
- Identify water-related infrastructure and management needs
- Promote collaboration with research institutions to develop technology and policies to enhance water supply and management

NMSA 1978,
§ 72-14-3.1(2003).

2003 State Water Plan: In 2003, the ISC pursued an historic public involvement campaign, conducting 29 meetings around the state. Several thousand citizens became better informed on water issues and had the opportunity to describe the conditions and needs of their communities.

The resulting State Water Plan provided a framework for the issues confronting the state, advanced knowledge about water issues in New Mexico and effectively identified policy initiatives that should move forward. It identified fundamental statewide priorities, goals, and objectives, but given a short time frame, limited funding and the complexity of this effort, the Plan did not come close to completing all of the legislative goals.

Work plans and strategies for the future were included to fully address the legislation. Subsequently, an appendix to the Plan identified major water resource issues by drainage basin. A 2004 implementation report and a 2006 progress report identified actions taken toward each of the strategies.

All of this work represents a concerted effort by the State to understand and address water resource issues. The documents and the information they contain are rich, useful sources of data, representing coordination among agencies, local water providers, and New Mexico citizens. The planning process has become a critical component of water management for the State.

Update of the State Water Plan: In the Act, the legislature required a periodic review of the Plan, to be conducted at least every five years. Therefore in 2008, the ISC embarked on a review that identified several key areas for improvement and highlighted the need to address the effects of climate change in future water planning efforts. Scientific evidence predicts significant reductions in future snowpack and changes in the timing

of runoff, which will have important implications for state water supply. The review also considered the implications of changes in water use occurring in New Mexico: water that was once used for rural/agricultural purposes is now being used in urban areas. Urban planning for our cities needs to occur so that New Mexico can grow in sustainable ways without decimating its rural areas.

During the spring of 2009, the ISC held 22 public meetings throughout the State to solicit comments from the public about key water issues for the Plan update. Common issues expressed at multiple meetings included: support for water conservation; water quality protection; better subdivision and land use regulations (to protect water supplies); watershed management; public education; better coordination between state and federal agencies; and protection of the agricultural sector.

Due to limited resources for technical studies, competing goals for staff time and the change in leadership in both the governor's office and the OSE, the 2010 State Water Plan update has yet to be completed. A draft has been prepared and will be available for public input upon final internal review. The State still has numerous steps to take in structuring and implementing state water planning to protect its water and the needs of its citizens. Progress toward fully implementing the Act will be dependent on resources directed toward this effort and a commitment on the part of agencies and decision-makers to use the State Water Plan as a blueprint for management actions and policy direction.

Regional Water Planning

Background: Regional water planning started with a lawsuit filed by Texas against New Mexico. In 1983, El Paso applied for a permit to take groundwater from a New Mexico aquifer. Relying on a statute prohibiting the transfer of water outside the boundaries of New Mexico, the OSE refused to issue the permit. The federal court, in *City*

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of *El Paso v. Reynolds*, found the statute to be unconstitutional. The court relied on the federal Commerce Clause (which gives the federal government authority over commerce between the states) and also upon the U.S. Supreme Court case of *Sporhase v. Nebraska*. The *Sporhase* case held that although water is an article of commerce, a state can give limited preference to its own citizens for the purpose of protecting the health of its citizens—reasoning that this is at the core of the state’s police power. In 1985, the New Mexico legislature enacted a statute giving guidance to the OSE on the process for out-of-state uses of water and this led to the 1987 law requiring regional water plans.

It was probably the case that Steve Reynolds believed the utility of the regional plans was in demonstrating that New Mexico needed all of its water and that once the plans were accepted by the ISC, no more regional planning was needed. However, over time both the State and many of the regions have come to realize the plans have immense value as repositories for regional water data, venues for discussion of water management issues, review of regional projects, and many other purposes.

Regions: For regional water planning purposes, the state is divided into 16 regions. The regions are mostly aggregations of counties, rather than representing watersheds or groundwater basins that share a common water supply. Each regional plan was completed in partnership with a local sponsoring agency (acting as fiscal agent) and an oversight committee representing various water user groups in each region. The plans were primarily funded by the ISC with local matching funds. Once a regional plan was completed at the local level, it went through final acceptance by the ISC. Efforts to update the regional water plans are largely stagnant now. About a quarter of the regions have ongoing efforts to update their regional plans, utilizing local funds. State funding for updating regional water plans remains minimal.

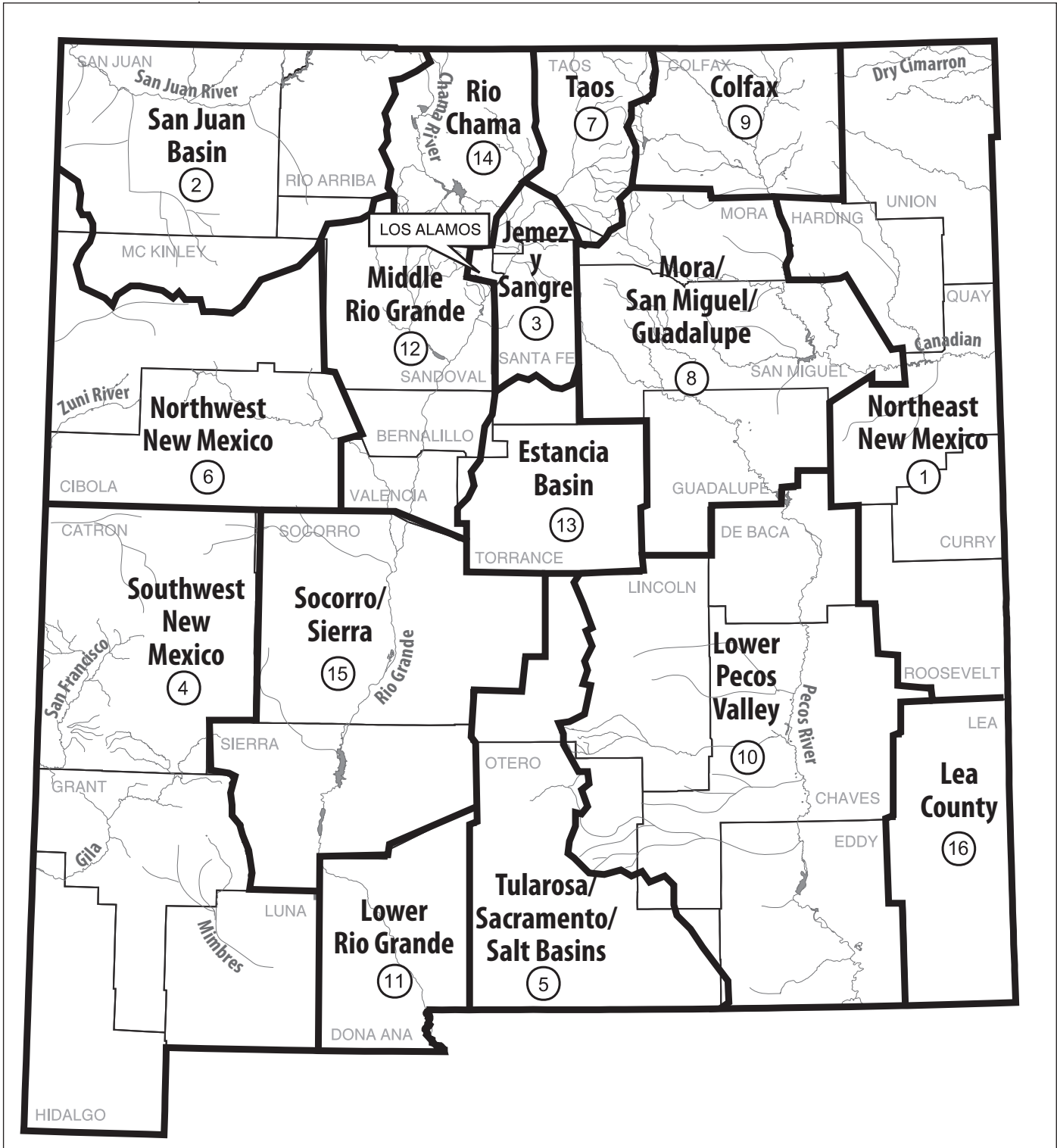
The Regional Plans can all be accessed on the OSE/ISC web site at http://www.ose.state.nm.us/isc_regional_plans.html

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Integration of Regional Water Plans: The 2003 Act set a goal of integrating “regional water plans into the state water plan as appropriate and consistent with state water plan policies and strategies.” In 2009, the ISC completed a detailed compilation of information from the 16 regional water plans, yet full integration of the regional water plans still remains a challenge. Full integration would mean that the sum of the parts equals the whole—that all of the regional plans when put together, would result in a cohesive State Water Plan. At present, some projections and assumptions in the regional plans conflict with those of other regions; and there are policies, particularly regarding water transfers from one region to another, that conflict with one another. Integration remains a challenge that will require a concerted effort between the state and regional planners, to complete numerous stakeholder discussions and negotiations throughout the state.

For future planning efforts, there may be regions, watersheds, or water accounting areas that should approach planning from a basin-wide framework—based on hydrology and water accounting instead of political boundaries. As a start toward that effort, the draft State Water Plan Update’s Basin profiles include information from the regional water plans.

Upstream-Downstream: An initial attempt by three regions to self-organize in the Middle Rio Grande Basin (Jemez y Sangre, MRG and Socorro/Sierra regions) began in 2006. The three regions are all part of one accounting area under the Rio Grande Compact (between Otowi gage and Elephant Butte Reservoir), but the boundaries for



**New Mexico
Sixteen Water Planning Regions
with Rivers and Counties**

By C. Kenesson for the Utton Transboundary Resources Center with information provided by Gretel Follingstad, ISC

planning regions don't line up and there are inconsistencies among the three plans. Of critical importance: there is a basin-wide deficit projected if current trends in population growth and water use continue.

The project, initiated by the N.M. Water Dialogue, supported by the McCune Charitable Foundation and the ISC and assisted by the Utton Center at UNM School of Law, was aimed at developing a way to reconcile differences and work on implementation strategies that would be most effectively approached at a basin-wide level. The big issues faced by the Upstream-Downstream group were: How do you integrate water data from different agencies accumulated under different methodologies, assumptions and time frames in a manner that allows decision-makers to see the big picture of water supply and demand? How do you get local and regional water providers to cooperate to protect the common supply? The effort was successful in initiating an understanding of basin-wide issues and concerns.

Consistency: The regional plans were developed according to a regional water planning handbook, which was developed by the ISC in 1994 in conjunction with regional water planners. Still, it is difficult to compare the information among the plans due to varying data formats and levels of detail in the information compiled by water agencies, both local and state.

To support long-term management objectives, it is important to be able to aggregate water information from local providers into a basin-wide perspective. The regional plans could be more easily integrated into the State Water Plan if they are updated in a more consistent format. The New Mexico Water Dialogue, a statewide organization that has been instrumental in initiating and supporting regional water planning, is working with the ISC to develop a new template.

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The compilation of regional water plans identified inconsistencies and included the following recommendations for regional planning:

- Increased stakeholder involvement, especially from water providers
- Stronger linkages to 40-year municipal plans and local land use plans
- Greater dialog with neighboring regions
- Use of scenario planning to reflect uncertainty and variable conditions
- Greater emphasis on planning for drought
- Greater emphasis on constraints to water delivery
- Greater emphasis on potential environmental impacts
- Greater emphasis on energy considerations
- Increased focus on implementation of key programs and projects
- Regular updates
- Annual progress reports
- Need for ongoing funding for regional plans

Compilation of the 16 Regional Water Plans indicated that the high growth projections result in more than 700,000 acre-feet of new diversions in 2040 compared to year 2000 diversions. This reinforces the need for the State to conduct long-range water planning activities.

Public Concerns: Public involvement at a local level was a primary concern in developing the regional plans. Another evolution of regional planning, beyond the

original intent of the Act, is to use the plans to provide guidance on the public's values related to water use in the regions. Many of the plans tried to develop a public welfare statement to help guide the OSE when considering water transfer and other permit applications. But achieving consensus in each region on a public welfare statement was often extremely challenging, for the obvious reason that it is difficult for a group of people with divergent interests and values to agree on what represents the "public welfare."

The public welfare statements in each regional plan for the most part are general in nature and do not provide specific criteria or a process for determining whether a specific water transfer or appropriation would be contrary to public welfare. For example, in cases where two or more public welfare values could potentially be in conflict, such as protecting the natural environment or supporting economic development, there is no process for determining how each public welfare statement should be applied.

In the Taos region, which was the last regional plan completed (in 2008), more specific criteria for defining public welfare were developed and a process for establishing a public welfare review board was proposed. Considerable controversy arose regarding the review board, and the ISC rejected the plan because of it. A mediated process was established to achieve agreement on public welfare. The final statement continues to include criteria for defining public welfare, but the public review board process was not included.

The Taos discussion goes to an essential question about long-range planning: is it a

process for including the public in continued discussion about decisions or an *end product* outlining projects and policies for the future?

The county of Taos revisited this issue and settled on a new approach. By ordinance, the County created an advisory committee to investigate proposed changes in water use and report findings to the County Commission. Further, the committee will educate the public and make recommendations to the County on whether to protest a proposed water rights transfer.

Water Planning in Other States

There are different approaches to water planning in other states. In some states, such as Colorado and Wyoming, the geographic area covered by a water plan is often organized by surface-water basin instead of political boundaries. In New Mexico, where supplies are heavily dependent on both surface and groundwater and surface and groundwater basins do not always coincide, there would be challenges in reorganizing according to water basin. The Upstream-Downstream effort represents one attempt to think in terms of watersheds and begin to look at the three regions in the middle Rio Grande together for planning purposes. Still, even organizing the Upstream-Downstream area did not get at the breadth of the full Rio Grande basin, which covers the entire middle region of the State. In Jemez y Sangre, there is one overarching plan, but the region is subdivided into more discreet sub-regions for water management purposes.

In addition to the physical dynamics of planning for basins or watersheds, New Mexico has obvious "process" issues needing resolution. For example, the regional planning groups are *ad hoc* and lack structure. Analysis of the compiled regional water plans points to moving from the *ad hoc* regional water planning steering committees to something more formalized to ensure broad-based and comprehensive participation and representation in each region.

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Colorado, in comparison, has set up a framework for continuing broad-based discussions of water issues. There, the planning function is a continuing process that is used as a mechanism for public input on decisions. There are basin roundtables established for each of the state's nine major river basins and a "metro roundtable" for the Denver metropolitan area. These basin roundtables facilitate discussions on water issues and encourage locally driven, collaborative solutions. Membership is broad-based but is statutorily defined. The roundtables are each responsible for developing a basin-wide needs assessment using groundwork completed during a statewide water supply study.

Colorado provides continued funding for the roundtables, further reflecting Colorado's view that planning is an important ongoing process, which provides direction for decision-making. If Colorado's system were applied to New Mexico, it is possible to envision that basin groups, such as roundtables or regional planning committees, might provide input on public concerns to the OSE/ISC on projects, policy development and water transfers and applications.

In Wyoming, the state was divided into seven river basins at the beginning of the planning process in 1999, and two basins were studied each year. All of the basin plans have been completed along with a framework plan that summarizes all seven plans. More specific feasibility studies and project plans are derived from the river basin plans. They are now in the phase of updating and revising the basin plans to better define the water resources of the state. Like Colorado, Wyoming approaches basin planning as an on-going process and not a one-time effort. Interestingly, as in New Mexico, the Wyoming statewide plan was created *after* the basin plans were prepared; it assimilates them rather than providing the foundation for them.

In Texas, the state water plan is used as guidance for all activities of the water

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agencies, for funding decisions, and for the permit approval process. The resources made available by the Texas legislature for the Texas state and regional water planning program are considerable and allow for a much greater level of study and oversight of water management activities. In November of 2013, the Texas voters approved a plan to put \$2 billion toward a "water implementation fund" for use on projects identified in the State's water plan.

Funding

Colorado, Wyoming, and Texas all provide funds for water planning at levels significantly higher than in New Mexico. Colorado allocates at least \$10 million per year to fund basin roundtable activities and projects. In Wyoming, the original seven basin plans were developed with a budget of about \$600,000 per basin. Wyoming is allocating \$500,000 per year to improve data and collect additional information. In Texas, the State spent \$21 million to develop the 16 regional water plans and an additional \$15 million for its state water plan. Texas spends millions of dollars each year on a continuing basis to ensure an updated and viable water planning program.

In comparison, New Mexico allocated \$55,000 to water planning in 2007. In 2008, there was a special appropriation of \$300,000 for State Water Planning, which was used to fund the public meetings, the regional water plan compilation report and facilitation of ISC strategic planning efforts. In 2009, the funding level was again \$55,000 and has not increased in 2010 or 2011. According to Representative Andy Nuñez, a consistent supporter of increased funding for water planning, New Mexico has not developed its water planning structure,

as it should. “When compared to other states, New Mexico is lagging behind in providing sufficient funding to protect its water resources.” In 2013, the legislature appropriated \$400,000. The agency also received a \$400,000 grant from the N.M. Finance Authority’s Local Government Planning Fund in October of 2013. The ISC projects that if the legislature appropriates an additional \$700,000 in the 2014 session, the agency will be able to complete the sixteen regional plans and the state water plan in the next two years.

A major issue in the present fiscal climate is how to fund the necessary planning and technical activities. The State of Kansas presents one example. Kansas created a State Water Plan Fund for the purpose of implementing its State Water Plan. Revenue is subject to annual appropriations and is generated by a water protection fee (3 cents per 1,000 gallons), a variety of other fees and fines and an annual appropriation from the General Fund of \$6 million.

Recent Developments

In June of 2013, the Interstate Stream Commission reported to the Legislative Interim Committee on Water and Natural Resources that one of its goals for FY 2014 was to revise the Regional Water Planning Handbook “to provide consistency and accountability in updating the regional water plans... [The revised planning template will] provide for integration of regional water plans, as appropriate, with the State Water Plan.” The ISC posted the final “Updated Regional Water Planning Handbook: Guidelines to Preparing Updates to New Mexico Regional Water Plans” to its website in early December of 2013. Other FY 14 goals for the Water Planning program include completing the update of the State Water Plan and, if resources permit, assisting selected regions to update their water plans.

The ISC plans to provide supply and demand projections for a 40-year planning horizon to each of the 16 planning regions to create a common technical foundation for

understanding New Mexico’s water supply and to correct the with inconsistency noted above. The ISC will be working with each region to develop a summary of legal issues, demographics, and economic forecasts and to broaden the stakeholder participation. The regional committees will identify the infrastructure projects, programs, and policies necessary to balance projected supplies and demands. No not everyone is happy with this plan. Concerns have been expressed about the State cutting out the local level of involvement on this important aspect of a plan and creating a state run system of planning.

Conclusion

In order for New Mexico to best manage its water resources, the State needs to invest in an ongoing planning process. The planning process should systematically address the goals set forth by the legislature and provide a framework for continued public input. The legislature should consider statutorily defined planning groups to set a new direction for a viable regional water planning program. Resources should be allocated for technical studies, including updated supply and demand assessments prepared in a consistent format, to work towards appropriate integration with the State water planning process. The plans should be used as a basis for decision-making and policy guidance at all levels. A steady funding source for these activities should be created. These steps will help to ensure good water resources management for the continued viability of the State.

By Brigette Buynak, Esq. and
Susan Kelly, J.D. (2008)

Latest Update by Sarah Armstrong,
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