

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

## **D R A F T**

### **I. Introduction**

In 2003, the legislature enacted a statute authorizing the Interstate Steam Commission (ISC), in collaboration with the Office of the State Engineer (OSE) and the Water Trust Board (WTB), to prepare a comprehensive state water plan that shall “integrate regional water plans into the state water plan as appropriate and consistent with state plan policies and strategies.” The ISC has convened regional water planners to recommend a policy regarding the relationship between the State Water Plan (SWP) and Regional Water Plans (RWPs). This document presents the results of the Ad Hoc Committee deliberations.

### **II. Recommended Policy Statement**

The legislature has authorized both a state water plan and regional water plans. The state water plan recognizes the value of both and seeks to balance the needs of the regions and the needs of the state.

The Ad Hoc Committee recommends that the State Water Plan integrate regional water plans except where there are overriding state interests. Where there are interests that affect both the state and a regional water plan(s), then the matter will be resolved via a collaborative effort.

The recommendation is divided into three sections: Section I, Introduction; Section II, Recommended Policy Statement, and Section III, Policy Statements regarding State and Regional Planning Issues. In Sections II and III, subsection A lists those planning responsibilities that are the state’s, subsection B lists the planning responsibilities that are more regional, subsection C lists issues where the state and the regions will share planning responsibility, and subsection D lists statements relating to ongoing planning efforts and implementation of plans. Section III details findings and recommendations listed in Section II.

#### **A. State**

**The ISC, OSE, and WTB have statutory authority and responsibility over specific matters which require policies that guide both the State and the Regions.**

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

These include:

1. water rights adjudications
2. interstate compact compliance
3. federal mandates
4. indian nations, tribes and pueblos
5. comprehensive database and information system
6. quantify water resources
7. unused water rights
8. unused or abandoned wells
9. liaison with federal agencies and tribal governments
10. use of New Mexico's saline and brackish water
11. use of produced water from oil and gas operations

**B. Region**

**To accommodate and protect the diversity of New Mexico some planning activities must be addressed at the regional level.**

These activities include:

1. water banks
2. conservation programs
3. public welfare

**C. State and Regions**

**The state water plan recognizes that some issues relate to both state and regional planning efforts. Differences that arise between regions, or between regions and the state require procedures and criteria developed in a collaborative effort between regions and appropriate state agencies.**

Issues that require resolution or collaboration between the state water plan and regional water plans include:

1. water transfers
2. drought and flood management
3. domestic wells
4. water quality
5. watershed management
6. joint state-regional projects
7. aquifer storage and recovery
8. water budgets
9. data sharing
10. funding
11. water availability and land use issues
12. critical management areas

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

**D. Implementation**

**The SWP recognizes that the state must support the completion, update and implementation of the regional water plans.**

1. complete, update and implement the regional water plans.
2. incentives for local government to implement regional water plans

### **III. Policy Statements Regarding State Water Plan and Regional Water Planning Issues**

#### **A. Policy Statements Guiding Both the State Water Plan and Regional Water Plans**

**The ISC, OSE, and WTB have statutory authority and responsibility over specific matters which require policies that guide both the State and the Regions.**

##### **1. Water Rights Adjudications**

Finding: New Mexico has only completed 15% of adjudications in the State.

Recommendation: It is a priority for New Mexico to adjudicate all water rights within the state. It is essential that settlements be expedited on a strict schedule. Therefore, the state shall improve processing of adjudications, support negotiation where appropriate, and provide adequate financial and technical resources to complete adjudication water rights in the state with due diligence.

##### **2. Interstate Compact Compliance**

Finding: Interstate Steam Compacts are agreements between states, ratified by Congress. Eight interstate stream compacts quantify New Mexico's share of surface waters.

Recommendation: New Mexico must fully comply with the delivery obligations while diligently protecting the state's portion of the regulated waters. In addition, New Mexico must develop effective strategies and innovative approaches to reach its obligations, through collaborative efforts between appropriate state agencies, in consultation with federal agencies and tribal governments as necessary, and regions affected by interstate compacts.

##### **3. Federal Mandates**

Finding: New Mexico must comply with Federal law and other mandates that affect the use of water in New Mexico.

Recommendation: The State must develop effective legal and political strategies and innovative management approaches to comply with Federal requirements. This will require collaborative efforts between the appropriate State agencies and regional stakeholders working in consultation with Federal agencies, and tribal governments. The regional water plans shall be considered in these deliberations.

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

**4. Indian Nations, Tribes and Pueblos**

Finding: Water rights of Indian nations, tribes and pueblos are not determined, abridged or affected by the state water plan.

Recommendation: New Mexico will consult directly with all governments of Indian nations, tribes and pueblos located wholly or partially within New Mexico to develop policies and processes to guide coordination or integration of the water plans of Indian nations, tribes and pueblos with the state water plan and for final adjudication or settlement of all water rights claims by Indian nations, tribes or pueblos.

**5. Comprehensive Data Base and Information System**

Finding: Existing databases do not cover many areas of the state or, where available, are incomplete. The Office of the State Engineer has made significant progress in the development of a number of databases that contribute to improved management of the state's water resources.

Recommendation: An accurate water-related database accessible to the public is critical to the management of New Mexico's water resources. It is essential that these databases be maintained to insure their continued usefulness and that they be enhanced with the addition of needed components. It is also recommended that these efforts for maintenance and expansion be coordinated with users throughout the state to identify needs as well as to invite cooperation.

**6. Quantify Water Resources**

Finding: New Mexico does not have sufficient measuring, gaging, monitoring, and modeling of its surface and ground water statewide.

Recommendation: The state shall exercise its authority to develop, implement and coordinate the measurement functions listed below. The state shall cooperate and coordinate expansion of the needed measurement programs with any regional programs in cities, counties, irrigation entities and universities. All data collected should be incorporated into publicly accessible databases.

- Modernize, update, and/or relocate gages for quantifying surface water flows, diversions, and returns
- Require metering and reporting of groundwater withdrawals
- Perform hydrogeologic characterization of groundwater basins
- Conduct continuous monitoring of water levels in groundwater aquifers
- Perform water quality assessments of surface and groundwater
- Quantify unregulated consumptive use (evaporation, transpiration, interception)

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

- Prioritize and develop groundwater and surface water models for active water management

#### **7. Unused Water Rights**

Finding: The State Water Plan Act states that “nothing in the State Water Plan shall be construed to permit the granting or condemnation of water rights”. However, some permitted users have let their water rights lie dormant, while other applications may have never put their requests to beneficial use. In addition, there are many diversion have never been recorded. Therefore, an inaccurate recording of information is quite common. Accurate information concerning current water use is critical to water management decision making.

Recommendation: The state shall review all pending water diversion permits and applications on an annual basis. Those not exercised within a specified time frame to be established by the state shall be canceled. The state shall review current, ongoing usage of all permitted diversions and apply appropriate statutory penalties for non-use or other violations

#### **8. Unused or Abandoned Wells**

Finding: New Mexico has numerous unused wells acting as a conduit for water to go from one aquifer to another. These unused wells have also been found to represent a hazard to water quality and public safety.

Recommendation: Regulations for management of unused or abandoned wells need to be developed or upgraded. Enforcement must be consistent with national well drilling policy including plugging.

#### **9. Liaison with Federal Agencies and Tribal Governments**

Finding: All regional water plans have issues, needs, coordination responsibilities; planning, infrastructure, and operational concerns; data gaps; permitting; and funding opportunities that necessitate the establishment and/or cultivation of relationships with the federal and/or tribal governments.

Recommendation: The State shall be the liaison, and assist the regions on water matters involving federal agencies and tribal governments. The Office of the State Engineer, Interstate Stream Commission, New Mexico Finance Authority, Water Trust Board, and other appropriate State agencies shall assist the regions with regard to infrastructure needs upon request to identify and prioritize opportunities to leverage federal and other funding sources.

#### **10. Use of New Mexico’s Saline and Brackish Groundwater**

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

Finding: New Mexico is known to have large quantities of brackish groundwater. Unfortunately, we do not know much about this resource. The growth in demand for the State's fresh water resources, both surface and ground, has reached the level that we must seriously consider use of this resource. Presently a number of our cities are seriously considering desalination in their future water supply plans. This is prompted by the intense competition for our fresh water resources and compounded by a number of years of drought, which has shrunk the supply.

Recommendation: The State shall immediately inventory the extent and characteristics of our saline and brackish ground water, review and refine as necessary our regulations allowing us to administer this resource, and support programs to improve desalination technology and techniques for disposal and/or use of the concentrate. The State will assist with implementation of various desalination projects.

#### **11. Use of Produced Water from Oil and Gas Operations**

Finding: Each year a significant quantity of water is produced by our oil and gas industry. The water is separated from the petroleum products and is handled as a waste product. It has been disposed of by injection back into deep formations. The growth in demand for the state's fresh water resources, both surface and ground, has reached the level that we must seriously promote beneficial use of this resource.

Recommendation: The State should actively support programs to improve the treatment technology, and review and refine as necessary, regulations that will allow us to administer this resource adequately and efficiently, and support incentive programs to encourage the beneficial use of this resource.

### **B. Policy Statements Regarding Issues Dealt with at the Regional Level**

**To accommodate and protect the diversity of New Mexico some planning activities must be addressed at the regional level.**

#### **1. Water Banks**

Finding: Water banks are a way of managing the use of water. Water transfers and leases, however, are subject to state statutes. In addition, there are a number controversial issues associated with water banks that need to be resolved.

Recommendation: Regions may develop water banks subject to state policies established for regions by legislation or by Office of the State Engineer rules and regulations.

#### **2. Conservation Programs**

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

Finding: Regions have diverse needs, water resources, mixtures of uses, and climates. Conservation is essential to the implementation of the state water plan and regional water plans and should be the foundation for effective administration and management of the water at all levels.

Recommendation: Conservation plans are developed at the regional levels. However, regions may not have adequate resources to evaluate conservation strategies. Therefore the regions request that the state provide information, education, and resources as appropriate.

### 3. Public Welfare

Finding: The state water plan act requires that the plan: "identify and reflect the common priorities, goals and objectives that will have a positive impact on the public welfare of the state" and "establish a clear vision and policy direction for active management of the state's waters." Regional water plans are required to "provide for.... adequate review of ... the effect of public welfare."

Recommendation: All regions must incorporate public welfare statements into their regional water plans. Public welfare statements in regional water plans are acceptable if applied only within that region. Conflicts between regional water planning statements and policies in the state water plan shall be identified. A process for reconciling conflicts between regional plan public welfare statements and state policy should be established in cooperation with the region(s).

### C. Policy Statements Regarding Issues that Relate to both the State Water Plan and Regional Water Plans

**The state water plan recognizes that some issues relate to both state and regional planning efforts. Differences that arise between regions, or between regions and the state require procedures and criteria developed in a collaborative effort between regions and appropriate state agencies.**

#### 1. Water Transfers

Finding: The state water plan act requires consideration of "water rights transfer policies that balance the need to protect the customs, culture, environment and economic health and stability of the state's diverse communities while providing for timely and efficient transfers of water between uses to meet both short-term shortages and long-term economic development needs." Some regions want to restrict water transfers between regions and other regions want water transfers between regions. Balancing differences between regions may depend on the circumstances. The Office of the State Engineer is required to deny applications for water rights transfers that may impair existing users, are contrary to conservation or detrimental to the public welfare of the state

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

Recommendations: 1) The state will create a process that includes affected parties to develop appropriate criteria, rules and regulations, or guidelines for resolving conflicting viewpoints as to how these markets would function 2) Criteria for resolution of inter-regional transfer disputes should be developed by the state in collaboration with affected parties.

## **2. Drought and Flood Management**

Finding: Droughts and floods have significant impacts on the state and require coordinated responses and financial support. The NM Drought Task Force is developing strategies in five topic areas: monitoring; drinking water; agricultural sector; recreation, tourism and economics; and wildfire and wildlife. The federal government offers assistance in dealing with both drought and floods.

Recommendation: Regions need to develop, improve and implement their own drought and flood management plans consistent with local, state and federal strategies.

## **3. Domestic Wells**

Finding: Although the amount of water consumption by domestic wells in New Mexico is small compared to other water uses, there are areas where uncontrolled issuance of domestic well permits has a significant impact on the water supply. The mandatory permitting of domestic wells leads to depletions of the underground water source to the impairment of existing water users in that area.

Recommendation: The State Engineer Office needs the authority to condition or restrict domestic wells where there are findings of negative impacts.

## **4. Water Quality**

Finding: Over time, water quality in New Mexico has deteriorated.

Recommendation: New Mexico, acting through the Water Quality Control Commission, needs to maintain and improve the water quality of the ground and surface waters of the state. The state shall maintain an accessible data bank of water quality reports by region and/or basin; and shall publish every three years analysis/summaries of the State's water quality. The state shall develop basin by basin water quality monitoring systems to provide real-time reporting on the condition of New Mexico's waters.

## **5. Watershed Management**

Finding: Healthy well-managed watersheds are crucial to the maintenance and development of water resources in the regions.

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

Recommendation: A coordinated effort by all entities, private and public as well as sovereign, to protect and maximize the water resources of the State needs to be undertaken immediately, including prioritizing critical areas. Implementation of effective watershed management programs in each of the State's basins, acting through federal, state, regional and local entities, requires the State to provide technical and funding assistance as well as coordination with federal entities.

## **6. Joint State – Regional Projects**

Finding: Large multi region water resource development projects may be necessary to increase water supply in water short regions. Regions may not have the funding and technical expertise to undertake such projects. State and federal assistance are critical components for success.

Recommendation: In conjunction with the water plans of regions and sovereign entities, the state needs to develop pilot projects designed to increase water supply, and maintain or improve water quality, to increase water availability, to protect the waters of the State, and to develop new sources of water supply. The State should act to provide matching money to attract both federal and private funding to develop programs. Local and regional share of projects may concentrate on in-kind work and similar type trade-offs, minimizing the need for local funds. Care needs to be taken to not infringe on senior water rights or to disenfranchise elements of the State's population in the development and execution of these efforts.

## **7. Aquifer Storage and Recovery**

Finding: The *Ground Water Storage and Recovery Act (72-5A NMSA 1978)* provides for the storage of water in underground aquifers and its subsequent recovery. The statute provides for the protection of the stored water so as to benefit the water right holder undertaking the storage. Without this protection such programs were not feasible. There are also requirements to define hydrologic relationships and evaluate the applicant's proposal as to the quantity of water to be stored and recovered. In addition the Act contains the delay section: "A governmental entity shall not submit an application pursuant to the Ground Water Storage and Recovery Act [72-5A-1 to 72-5A-17 NMSA 1978] and the state engineer shall not process an application, issue a regulation pursuant to that act or implement any part of that act unless the state engineer has been appropriated enough money or has sufficient resources to carry out the provisions of that act" (72-5A-17 NMSA 1978). Unfortunately, this limitation is delaying this activity in a time when it could be useful to conserve our water resources.

Recommendation: The New Mexico Legislature must provide funds to the Office of the State Engineer to adequately administer the provisions of the Act.

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

## **8. Water Budgets**

**Finding:** Water, like money, is a limited resource whose use must be budgeted. Water budgets provide the foundation of both the state water plan and regional water plans. Once water budgets are completed, the relationship between supply and demand will be better quantified.

**Recommendation:** Differences between the state and regional water budgets must be reconciled and coordinated with the regional plan. In addition, water budgets for municipalities and other water suppliers need to be developed and reconciled with both regional water budgets and the state's water budget.

## **9. Data Sharing**

**Finding:** Water resources data encompasses a wide array of information such as flow measurements, water use information, well logs, water rights, and others. The data has been developed by many different parties for as many different reasons. Significant data collections that are not shared. The State participates in a number of these activities. For example, the State and USGS cooperate to provide data such as stream flow data from gages via online internet sites. Other entities such as the Elephant Butte Irrigation District have developed their own data collection and delivery systems and provides online access to data they collect. Federal agencies collect information for their various programs. University research efforts also collect data. There is a need to coordinate and organize these diverse efforts.

**Recommendation:** The Office of the State Engineer should organize discussions via a 'water data forum' with the assistance of regional groups to develop recommendations for coordinating and sharing of water data.

## **10. Funding**

**Finding:** The State water plan act also recognizes the critical need for repair and upgrade of existing water-related infrastructure and for new infrastructure. In many cases, the requisite precursors to development of capital facilities, such as planning, permitting, procurement, and design efforts are not in place. A prominent impediment to the ability of regions to successfully implement water-related processes is a lack of funding for planning and feasibility studies.

**Recommendation:** The State shall therefore continue to assist the regions with direct funding of water programs and projects, and also assist regions in identifying, applying for, and obtaining funding from other sources, including the federal government. The State, in a collaborative effort, shall also provide assistance towards resolution of conflicts between the regions, or the regions and the State, regarding funding; and will

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

seek to mitigate adverse affects resulting from competition between the regions for limited funding sources.

#### **11. Water Availability and Land Use Issues**

Finding: Local governments have authority to allow new and changes in land uses without consideration of a long term water supply.

Recommendation: To manage water supplies effectively, the relationship between land use planning and water planning must be improved through collaborative efforts between the state and local governments.

#### **12. Critical Management Areas**

Finding: In some areas of the state, groundwater is being used up significantly faster than it is being replenished or recharged, resulting in serious water level declines, and wells that have begun go dry in the near-term. These areas require greater protection than other areas in order to maintain some level of stability for the people who depend on groundwater supplies.

Recommendation: Critical management areas and management options should be designated pursuant to a rulemaking. The state should give significant weight to a request from a region to support critical management area designation as well as the management tools proposed by the region.

#### **D. Suggested Policy Regarding Planning and Implementation**

**The SWP recognizes that the state must support the completion, update and implementation of the regional water plans.**

##### **D.1. Complete, update and implement the regional water plans**

Finding: Some regions need funding to complete their regional water plans and have them accepted by the ISC. Accepted plans will need funding for updates pursuant to state water plan policies.

Recommendation: The State will continue to support the regional water planning program with funding for plans that are not as yet completed and accepted by the ISC and updates of accepted plans as authorized by the ISC to assure smooth integration of these plans with state water policies.

New Mexico Interstate Stream Commission  
Ad Hoc Committee  
Regional Water Plans-State Water Plan

**D. 2. Incentives for Local Governments to Implement Regional Water Plans.**

Finding: Local governments may be unable or unwilling to take difficult actions necessary to protect and manage water resources at a wider regional level.

Recommendation: Collaboration is needed between the state and local governments to develop guidelines and incentives to implement the policies and recommendations in regional and state water plans.