Water and Wastewater Systems In New Mexico:  
A Statutory Review and Comparison

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This report is a summary of the existing statutory framework for drinking water supply and wastewater collection systems in New Mexico.

The project was undertaken by the Utton Center under contract with the Office of the State Engineer in collaboration with the Institute of Public Law (IPL) at the University of New Mexico School of Law.

Judy Flynn-O’Brien, a senior attorney at IPL, was the project lead. The work was guided by a Management Team representing the Office of the State Engineer, the New Mexico Environment Department and the New Mexico Rural Water Association.

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Communities throughout New Mexico have struggled for years with the challenge of supplying drinking water to their members in a safe, affordable and sustainable way, a challenge made all the more apparent during times of drought. One small step toward understanding the problems faced is to identify and compare the widely different statutory structures for drinking water supply and wastewater collection systems, and the extent to which the statutory tools for system planning, management and funding are available.

The Office of the State Engineer contracted with the Utton Transboundary Resources Center at the University of New Mexico School of Law, in conjunction with the law school’s Institute of Public Law, to review the statutes under which water and wastewater systems are organized and to summarize that statutory framework. A project management team comprised of representatives of the OSE, the Construction Program and Drinking Water Bureaus at the New Mexico Environment Department and the New Mexico Rural Water Association guided the effort.

Early in the project, a list of the statutes of interest was developed. This list, includes the laws under which the different types of systems are organized and managed, as well as laws relating to system financing, regulatory oversight, and water planning. The project management team also developed a list of the components of a statute that were thought to provide a water or wastewater system with the statutory powers and authorities, requirements and responsibilities needed to meet the challenges of drought and obligations under the Safe Drinking Water and Clean Water Acts. Each statute was summarized with these elements in mind and the summaries included in these materials.

The final result of the project is a series of charts that list and compare the different statutes under which systems are organized. A separate chart, prepared by an OSE intern working with the funding entities, describes the different public grant and loan programs and the types of systems eligible to participate in them. Both sets of charts are included in these materials.

The purpose of this project was to develop information on the existing statutory framework for water and wastewater systems to enable researchers and policymakers to understand that framework and take any next steps needed to improve it. As the charts indicate, certain trends or themes surfaced as we compiled and reviewed the different laws. Many of the statutes are silent or limited in the extent to which they address the elements that the management team thought were important.

- Defining the service area: Few of the statutes give the entity operating the water or wastewater system an exclusive service area or the tools to prevent encroachment or overlap and avoid duplication of services. Most of the statutes are silent or ambiguous. Related to this observation are the following:
- Source water protection: Some statutes do not give the water system the means to protect the source of its water supply from pollution. State and local laws may provide some protection but the system itself has few tools.

- Water conservation measures: Few of the statutes require that systems employ water conservation measures.

- Coordinating water supply and wastewater collection: Whether or not the same organization provides both water and wastewater service, there is little reference in the statutes to coordination of the two functions.

- Governing structure: Few of the statutes provide guidance to the board of directors to ensure skilled direction and management over time. Few require the retention of board members and professional staff to ensure that the organization has the capacity and expertise to operate the system or manage the business. Surprisingly few provisions exist to guide an entity interested in changing its structure through reorganization, merger or other joint or regional management of a shared resource. It is not always clear whether the organization is a private or a public entity.

- Financial management: Water and wastewater systems run into trouble when they do not plan sufficiently for replacement and repair, or for emergencies. Few of the statutes require that systems engage in this type of financial planning or the maintenance of reserve funds. Sometimes rates and charges are required only while bonds are outstanding, and little attention is paid to the use of rates to maintain long term viability or conserve the water supply.

- System and area-wide planning: Few of the laws require that the entity owning or operating the system engage in system planning or participate in regional planning. Little in the statutory toolbox equips systems, especially the smaller systems, to deal with long term capacity planning or drought management.

- Regulatory oversight: Environmental, utility, financial, and public oversight vary greatly from system to system. Some systems appear to receive little oversight under the law.

We also offer a few specific observations gleaned from our efforts to compile and review the myriad laws that create statutory structures for water systems:

- A number of different laws, passed at different times, offer different and sometimes inconsistence guidance to counties interested in owning and operating their own water supply and wastewater collection systems;

- A number of water and wastewater systems are operated by homeowner and property owner associations in subdivisions and developments, and yet there is not a single statute that clearly guides the organization of these systems;
Some statutory structures make the formation of a water supply or wastewater collection system very complex while others seem to make it all too easy; and none of the existing structures offer a clear and comprehensive set of provisions to meet today’s challenges. New Mexico does not yet have a model law in place.