

1-1-2014

## Western Water Planning Processes: Lessons for Colorado

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## Western Water Planning Processes: Lessons for Colorado

## CASE NOTE

# WESTERN WATER PLANNING PROCESSES: LESSONS FOR COLORADO

MEGHAN LEEMON

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### I. INTRODUCTION

As the demand for water outpaces a relatively stagnant supply in the United States, states, particularly in the west, are developing water plans to better prepare for their water future. The state water plans, through state water boards, establish “water policies and goals.”<sup>1</sup> Government involvement in water law and water plans is crucial because properly completed plans help local governments better understand water as a resource and how to protect this interest.<sup>2</sup> In the west, Arizona, Colorado, and Washington are the only states without comprehensive water plans.<sup>3</sup> Although Arizona has a “water atlas,” the atlas breaks down into seven distinct parts, lacking a cohesive component inherent in a comprehensive state water plan.<sup>4</sup>

Plans, such as those in California and Texas, note that comprehensive water plans are necessary to address the persistent drought and the pressing need to

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1. CRAIG BELL & JEFF TAYLOR, WATER LAWS AND POLICIES FOR A SUSTAINABLE FUTURE: A WESTERN STATES’ PERSPECTIVE 22 (2008) available at <http://www.westgov.org/wswc/laws%20&%20policies%20report%20%28final%20with%20cover%29.pdf>.

2. See Stephen H. Greetham, *Symposium: Oklahoma’s 21st Century Water Challenges: Water Planning: An Opportunity for Managing Uncertainties at the Tribal-State Interface?*, 64 OKLA. L. REV. 593, 604-05 (2012).

3. Emily Dowd, *Conference Report: Colorado Water Congress Summer Conference 2013: Leading out Water Future*, 17 U. DENV. WATER L. REV. 156, 168 (2013).

4. See *Welcome to the Arizona Water Atlas on the Web!*, ARIZONA DEPARTMENT OF WATER RESOURCES, <http://www.azwater.gov/AzDWR/StatewidePlanning/wateratlas/default.htm> (last visited Apr. 21, 2014).

plan for the future.<sup>5</sup> Despite criticism that water plans are an “ineffective tool to link water and growth,” the plans persist and appear effective in most states.<sup>6</sup>

Colorado is in the process of developing and drafting a cohesive attempt at a state water plan. A first draft is due to the Governor on December 10, 2014, with a final approval date of December 2015.<sup>7</sup> It can be argued the state’s constitution’s embrace of the prior appropriation doctrine<sup>8</sup> and the 1969 Water Right Determination and Administration Act<sup>9</sup> serve as a de facto state water plan. James Eklund, the Colorado Water Conservation Board (“CWCB”) Executive Director, has made assurances that “Colorado’s water plan must and will work with the Doctrine of Prior Appropriation.”<sup>10</sup> This note will address water plans in California, Idaho, and Wyoming, specifically examining the processes and procedures behind each plan, and how Colorado can learn from and look to these other states for guidance.

## II. PROCESS FOR ADOPTING STATE WATER PLANS

### A. CALIFORNIA

California has a long history of water plans, dating back to 1919 with the Marshall Plan.<sup>11</sup> The Marshall Plan led to the first state-operated water project plan, the California State Water Plan (“California Plan”), published in 1930.<sup>12</sup> Since 1930, California has updated the California Plan numerous times, most recently with Update 2013.<sup>13</sup> Update 2013 had a scheduled March 2014 release date. Although the final version is not yet available,<sup>14</sup> three out of five Update 2013 volumes are available online via a Public Review Draft.<sup>15</sup>

The California Water Code (“CWC”) mandates the California Plan in Section 10000 and each plan must comply with the requirements set forth in sections 10004-10013.<sup>16</sup> Requirements include conducting studies to determine

5. ARNOLD SCHWARZENEGGER ET AL., CALIFORNIA WATER PLAN HIGHLIGHTS 2 (2009) available at [http://www.waterplan.water.ca.gov/docs/cwpu2009/0310final/highlights\\_cwp2009\\_spread.pdf](http://www.waterplan.water.ca.gov/docs/cwpu2009/0310final/highlights_cwp2009_spread.pdf); *State Water Planning*, TEXAS WATER DEVELOPMENT BOARD, <http://www.twdb.state.tx.us/waterplanning/swp/> (last visited Apr. 21, 2014).

6. BELL & TAYLOR *supra* note 1, at 22.

7. COLORADO’S WATER PLAN TIMELINE, [http://rockies.audubon.org/sites/default/files/documents/co\\_water\\_plan\\_timeline\\_cropped\\_image.jpg](http://rockies.audubon.org/sites/default/files/documents/co_water_plan_timeline_cropped_image.jpg) (last visited Apr. 21, 2014).

8. COLO. CONST. art. XVI, §§ 5, 6.

9. Water Right Determination and Administration Act of 1969, COLO. REV. STAT. §§ 37-92-101 to -602 (2013).

10. Steve Porter, *Colorado Water Summit Highlight’s State’s Water Challenges, seeks answers through Water Plan*, INNOVATIONNEWS (Mar. 4, 2014), <http://innovationnews.com/water/water-summit-highlights-states-water-challenges-seeks-answers-through-water-plan/>.

11. *History of the California State Water Project*, DEPARTMENT OF WATER RESOURCES, <http://www.water.ca.gov/swp/history.cfm> (last visited Apr. 21, 2014); *Previous Reports, CALIFORNIA WATER PLAN*, <http://www.waterplan.water.ca.gov/previous/index.cfm> (last visited Apr. 21, 2014).

12. *History of the California State Water Project*, *supra* note 11; *Previous Reports*, *supra* note 11.

13. *Previous Reports*, *supra* note 11.

14. As of April 21, 2014.

15. *Public Review Draft, CALIFORNIA WATER PLAN*, <http://www.waterplan.water.ca.gov/cwpu2013/prd/index.cfm> (last visited Apr. 21, 2014).

16. WATER §§ 10000; 10004-13; EXECUTIVE SUMMARY, THE CALIFORNIA WATER PLAN:

the water amount needed to meet California's future needs as well as recommendations on how to meet the needed levels.<sup>17</sup> The CWC mandates the California Department of Water Resources to publish and update the California Plan every five years.<sup>18</sup> The Department of Water Resources must report each update component to the California Legislature "in the session in which the update plan is issued."<sup>19</sup> For each California Plan update, receiving broad input from Californians is a primary goal for drafters in order to be more innovative and to have a better, maintainable outcome.<sup>20</sup> As such, the CWC requires a preliminary draft release to all interested persons and entities in California for their review and comments.<sup>21</sup> Update 2013 involved extensive collaboration between the public, stakeholders, businesses, tribes, and state agencies to provide an "actionable blueprint for California's water future."<sup>22</sup> The CWC requires an advisory committee to assist in the updating process; all meetings with the committee must be open to the public.<sup>23</sup> Update 2013 does not create "mandates, prioritize actions, or allocate funding," but rather provides a roadmap to better inform legislative action and to help shape planning processes and decision making at all government levels.<sup>24</sup>

Update 2013 focuses on advancing integrated water management, strengthening government agency alignment, and investing in innovation and infrastructure.<sup>25</sup> More specifically, Update 2013 focuses on an outcome-based and goal-oriented approach through strategies and suggestions, but does not lay out specific projects.<sup>26</sup> By improving government agency alignment, California hopes to ensure efficient and accelerated implementation of the proposed strategies.<sup>27</sup> While the California Plan does not allocate funding specifically, it does mention funding and funding suggestions in a variety of ways: self-funding programs, cost-sharing programs, and public benefits programs.<sup>28</sup>

In addition to the California Plan, the California Governor directed the creation of a California Water Action Plan ("Action Plan") to identify key actions for California's urgent water needs.<sup>29</sup> The Mountain Counties Water Resources Association ("MCWRA") has both applauded and criticized the Action

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INVESTMENT IN INNOVATION AND INFRASTRUCTURE I (2013).

17. WATER § 10004.6 (a).
18. *Id.* § 10004(b)(1); CALIFORNIA WATER PLAN, <http://www.waterplan.water.ca.gov/> (last visited Apr. 21, 2014).
19. WATER § 10004(b)(1).
20. CALIFORNIA WATER PLAN, *supra* note 18.
21. CAL. WATER CODE § 10004(b)(3).
22. EXECUTIVE SUMMARY, *supra* note 16, at 7; CALIFORNIA WATER PLAN, *supra* note 18.
23. WATER § 10004(b)(2).
24. EXECUTIVE SUMMARY, *supra* note 16, at 1.
25. EXECUTIVE SUMMARY, *supra* note 16, at 2.
26. *Id.* at 3; David Aladjem, Partner with Downey Brand LLP, Presentation on California's Water Plan, University of Denver Water Law Review Symposium (Apr. 18, 2014), *available at* <http://duwaterlawreview.com/symposium-2014-2/>.
27. *See* EXECUTIVE SUMMARY, *supra* note 16, at 3.
28. *Id.* at 4; Maven, *First Volume of the California Water Plan Available for Public Review*, MAVEN'S NOTEBOOK (Oct. 3, 2013), <http://mavensnotebook.com/2013/10/03/first-volume-of-the-california-water-plan-available-for-public-review/>.
29. CALIFORNIA WATER ACTION PLAN, [http://resources.ca.gov/california\\_water\\_action\\_plan/](http://resources.ca.gov/california_water_action_plan/) (last visited Apr. 21, 2014).

Plan. The MCWRA applauds the plan as being a “coordinated, comprehensive plan for addressing the statewide water challenges.”<sup>30</sup> However, the MCWRA criticized the plan because it does not integrate the Sierra Nevada headwaters, where most of the state’s drinking water supply comes from, to the degree the MCWRA would have hoped.<sup>31</sup> No state water plans are perfect, and California is no exception. David Aladjem, an attorney and partner at one of California’s most successful water firms, criticized the new, comprehensive California Plan as no longer being a central guiding document, but instead describes it as “peripheral.”<sup>32</sup> In addition to the California Plan, California also has various other regional “water plans,” such as the Bay Delta Conservation Plan<sup>33</sup> and the Central Valley Project.<sup>34</sup> The Central Valley Project, a water conservation project consisting of dams, reservoirs, power plants, and canals, reaching roughly nine million acre-feet of water, is a federal project overseen by the United States Bureau of Reclamation.<sup>35</sup> Balancing these various plans poses a significant challenge for California.

Overall, California still has a comprehensive water plan that helps guide water use in one of the nation’s largest and most populous states. California has a long history in water planning and has learned from their past mistakes. Other states can look to California to help guide their own water planning process. California recognizes that water supply is ever changing and the need for a new plan every five years is essential in providing for several decades to come.<sup>36</sup> Other states should look at the flexible nature of the California Plan and consider requiring a similar update schedule, to allow time to see what is and is not working, while still aiming for the long-term relevance of the plan.

## B. IDAHO

Idaho adopted its first State Water Plan (“Idaho Plan”) in 1974, with updates occurring every two to four years until 1996.<sup>37</sup> Idaho did not update its water plan again until 2012, when the 1996 Idaho Plan was becoming outdated and in need of improvement.<sup>38</sup> Idaho also has ten individual basin plans; each basin updates its plan more frequently than the comprehensive Idaho Plan.<sup>39</sup>

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30. *California Water Action Plan*, MOUNTAIN COUNTIES WATER RESOURCES ASSOCIATION (Nov. 24, 2013), <http://mountaincountieswater.com/2013/11/california-water-action-plan-public-review-draft-mcwra-comments/>.

31. *Id.*

32. Aladjem, *supra* note 26.

33. BAY DELTA CONSERVATION PLAN, <http://baydeltaconservationplan.com/Home.aspx> (last visited May 11, 2014).

34. 16 U.S.C.S. §695d (LexisNexis 2014).

35. CENTRAL VALLEY PROJECT, [http://www.usbr.gov/projects/Project.jsp?proj\\_Name=Central+Valley+Project](http://www.usbr.gov/projects/Project.jsp?proj_Name=Central+Valley+Project) (last visited May 11, 2014).

36. CALIFORNIA WATER PLAN, *supra* note 18.

37. *State Water Plan*, IDAHO WATER RESOURCE BOARD, [http://www.idwr.idaho.gov/waterboard/WaterPlanning/Statewaterplanning/State\\_Planning.htm](http://www.idwr.idaho.gov/waterboard/WaterPlanning/Statewaterplanning/State_Planning.htm) (last visited Apr. 21, 2014).

38. *Id.*; See also Kimberlee Kruesi, *A New Plan for Idaho’s Water*, MAGIC VALLEY (July 20, 2012, 2:10 AM), [http://magicvalley.com/news/local/a-new-plan-for-idaho-s-water/article\\_ea7c6244-d228-11e1-9d9b-001a4bcf887a.html](http://magicvalley.com/news/local/a-new-plan-for-idaho-s-water/article_ea7c6244-d228-11e1-9d9b-001a4bcf887a.html).

39. See *Comprehensive Basin Planning*, IDAHO WATER RESOURCE BOARD, [http://www.idwr.idaho.gov/waterboard/WaterPlanning/CompBasinPlanning/Comp\\_Basin\\_Plans.htm](http://www.idwr.idaho.gov/waterboard/WaterPlanning/CompBasinPlanning/Comp_Basin_Plans.htm) (last visited Apr. 21, 2014).

The Idaho Constitution provides the discretionary authority to prepare a state water plan through a mandated “Water Resource Agency;” unlike California, Idaho law does not mandate a water plan.<sup>40</sup>

Creating the Idaho Plan is a five-step process, beginning with a comprehensive public involvement program and ending with Idaho Legislature approval.<sup>41</sup> With extensive public input, the 2012 Idaho Plan went into effect on March 8, 2013.<sup>42</sup> Under Idaho law, the Idaho Legislature receives the Water Plan on the first session day, and if no legislative changes are made within sixty-days, then the plan, as written, becomes effective.<sup>43</sup>

The Idaho Water Resource Board (“IWRB”) develops the Idaho Plan.<sup>44</sup> The Idaho Plan has two primary components: (i) addressing statewide policies, goals, and objectives, and (ii) addressing individual basin plans.<sup>45</sup> Similar to California, Idaho drafted the plan with public input; the IWRB held seven public hearings across the state, where the public submitted written comments and exhibits to the IWRB for consideration.<sup>46</sup> Forty-seven constituents, including individual state residents and various environmental group representatives, provided either written or oral testimony to the IWRB during the public comment period.<sup>47</sup>

Similar to California, the Idaho Plan involves many suggestions, but no mandates or regulations.<sup>48</sup> IWRB Chairman Roger Chase said that by creating a voluntary water plan, Idaho has “one of the most successful salmon recovery programs in the nation.”<sup>49</sup> For the first time, the 2012 Idaho Plan “includes implementation strategies and milestones” to guide the execution of such policies.<sup>50</sup> Strategies include authorizing legal action to protect Idaho’s sovereignty over its water and cooperating with state agencies, neighboring states, the federal government, and Indian tribes.<sup>51</sup> The Idaho Plan both explains the past and provides a forward path.<sup>52</sup> The Idaho Plan lists five main objectives for the new

40. IDAHO CONST. art. XV, § 7.

41. IDAHO WATER RESOURCE BOARD, IDAHO STATE WATER PLAN 5 (2012).

42. See Aaron Kunz, *Idaho’s New State Water Plan Adopted without Legislative Approval*, OPB (Mar. 7, 2013), <http://earthfix.opb.org/water/article/idahos-new-state-water-plan-adopted-without-legisl/>.

43. IDAHO CONST. art. XV, § 7.

44. *Comprehensive State Water Planning*, IDAHO WATER RESOURCE BOARD, <http://www.idwr.idaho.gov/waterboard/WaterPlanning/comprehensive%20planning.htm> (last visited Apr. 21, 2014).

45. DAVID R. TUTHILL, JR., ET AL., THE WATER REPORT 4 (2013), available at <http://www.cwi.colostate.edu/southplatte/files/Conjunctive%20Management%20in%20Idaho-The%20Water%20Report.pdf>.

46. See *Background Information on Revision Process*, IDAHO WATER RESOURCE BOARD, [http://www.idwr.idaho.gov/waterboard/WaterPlanning/StateWaterPlanning/Background\\_info.htm](http://www.idwr.idaho.gov/waterboard/WaterPlanning/StateWaterPlanning/Background_info.htm) (last visited Apr. 21, 2014).

47. See *id.*; see also *Public Testimony & Written Comments Received by IWRB*, IDAHO WATER RESOURCE BOARD, <http://www.idwr.idaho.gov/waterboard/WaterPlanning/StateWaterPlanning/PDFs/Public%20Comment%20Summary%20Table.pdf> (last visited Apr. 21, 2014).

48. See Kunz, *supra* note 42.

49. *Id.*

50. IDAHO STATE WATER PLAN, *supra* note 41, at iv.

51. *Id.* at 8.

52. Clive Strong, Chief of the Natural Resources Division of the Office of the Attorney General of the State of Idaho, Presentation on Idaho’s Water Plan, University of Denver Water Law

plan to accomplish: water management, public interest, economic development, environmental quality, and public safety.<sup>53</sup>

The new Idaho Plan addresses concerns about salmon recovery, wetlands, and climate variability.<sup>54</sup> Although the Idaho Plan focuses extensively on climate variability, the legislature apparently originally planned to remove the concept. The House Resources and Conservation Committee attempted to rewrite the plan halfway through the sixty-day legislative period by removing every mention of climate change and most mentions of riparian and wetland habitats and protecting endangered species.<sup>55</sup> Because the proposed changes were too late and there was insufficient time to have the House and the Senate pass the changes, the 2012 Idaho Plan went into effect as originally written and proposed to the Idaho Legislature, including the IWRB focus on climate variability.<sup>56</sup>

Like all other water plans, organizations and the legislature have criticized the Idaho Plan. The Kootenai Environmental Alliance praises the Idaho Plan as recognizing many beneficial water uses and the need to protect those uses, yet also notes that the plan is “overly reliant on the construction of dams to meet future water needs.”<sup>57</sup> Dam construction is “expensive, damaging to the environment, and provides no guarantee of additional water.”<sup>58</sup> Prior to enactment, the Idaho Conservation League prompted Idaho citizens to inform the IWRB that clean water and water conservation should be a priority.<sup>59</sup>

Idaho has certainly come far since 1996, but they have a ways to go before all can accept or even tolerate their water plan. Clive Strong, the Natural Resources Division Chief of the Idaho Attorney General’s Office, praises the plan as contemplating and providing for change.<sup>60</sup> However, there has already been talk about revising the plan despite its recent enactment.<sup>61</sup> IWRB Chairman Roger Chase called the Idaho Plan a “living document” and is open to future changes.<sup>62</sup> Only time will tell in Idaho whether the more effective method is one comprehensive plan, individual basin plans, or possibly a combination. Either way, the IWRB should be, and fortunately is, open to suggestions.

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Review Symposium (Apr. 18, 2014).

53. IDAHO STATE WATER PLAN, *supra* note 41, at 6, available at <http://duwaterlawreview.com/symposium-2014-2/>.

54. Kunz, *supra* note 46.

55. Chris Jones, *Water Plan Hits Choppy Waters*, IDAHO COUNCIL OF TROUT UNLIMITED (Mar. 4, 2013), <http://idahotrount.org/2013/03/04/water-plan-hits-choppy-waters/>; Marie Kellner, *Climate Change? Real? Legislature Seems to think Not*, IDAHO CONSERVATION LEAGUE (Mar. 1, 2013, 4:10 PM), <http://www.idahoconservation.org/blog/2013-blog-archive/climate-change-real-legislature-seems-to-think-not>.

56. See Kunz, *supra* note 42.

57. *Idaho State Water Plan Revisions under Consideration*, KOOTENAI ENVIRONMENTAL ALLIANCE (Sept. 11, 2012, 2:00 PM), <http://kealliance.org/2012/09/11/idaho-state-water-plan-revisions-under-consideration/>.

58. *Id.*

59. Marie Kellner, *Speak up for Smart use of Idaho’s Water!*, IDAHO CONSERVATION LEAGUE (Aug. 27, 2012, 4:00 PM), <http://www.idahoconservation.org/blog/2012-blog-archive/swp/?searchterm=water%20plan>.

60. Clive Strong, *supra* note 52.

61. See Kunz, *supra* note 42.

62. See Rocky Barker, *Idaho State Water Plan gets Strong Support from Resources Committee*, IDAHO STATESMAN (Mar. 7, 2013), <http://blogs.idahostatesman.com/idaho-state-water-plan-get-strong-support-from-resources-committee/>.

## C. WYOMING

Wyoming published its first comprehensive water plan in 1973, and did not update the plan until 2007, thirty-four years later.<sup>63</sup> Both the updated 2007 Wyoming Plan and the 1973 Plan consisted of an overall, comprehensive framework as well as an emphasis on the seven individual basins.<sup>64</sup> Similar to Idaho, there is no requirement to update the plan at a given interval. Wyoming decided that a new Wyoming Framework Water Plan (“Wyoming Plan”) was necessary in 2007 due to technological advances and changing political and regulatory conditions.<sup>65</sup> The 2007 Wyoming Plan has two objectives and has two volumes to reflect each objective: Volume I is a summary of the state’s water uses, projected future needs, and alternative ways to meet the future needs; Volume II provides future water planning and direction to Wyoming.<sup>66</sup>

In 1997, the Wyoming Legislature directed the Wyoming Water Development Commission (“WWDC”) to “conduct a water planning feasibility study” with the University of Wyoming.<sup>67</sup> The legislature created the WWDC in 1979, and mandated that it consist of ten members, appointed by the Governor and approved by the Senate, responsible for the “coordination; development and planning of Wyoming’s water and related land resources.”<sup>68</sup> The 1997 WWDC study led to the creation of seven individual basin plans, with the last one completed in May 2006.<sup>69</sup> In 2005, the legislature authorized funding for a comprehensive state water plan.<sup>70</sup>

The 1973 Framework Plan is still a valuable reference for Wyoming’s policy makers and water resources managers.<sup>71</sup> Steve Wolff, the Colorado River Coordinator for the Wyoming State Engineer’s Office, noted that the 2007 Plan involved virtually no real planning, but simply updated the 1973 Plan.<sup>72</sup> The current 2007 Wyoming Plan provides information based on a thirty-year planning horizon.<sup>73</sup> Although Wyoming has updated some of the individual basin plans since their initial reports, the state has not updated the Wyoming Plan since the 2007 enactment.<sup>74</sup> Wyoming has not updated three out of the seven

63. *History of the State Water Planning Process*, WYOMING STATE WATER PLAN, <http://waterplan.state.wy.us/history.html> (last visited Apr. 21, 2014); *Statewide Framework Water Plan*, WYOMING STATE WATER PLAN, <http://waterplan.state.wy.us/frameworkplan.html> (last visited Apr. 21, 2014).

64. *History of the State Water Planning Process*, *supra* note 63.

65. WWC ENGINEERING ET AL., *THE WYOMING FRAMEWORK WATER PLAN: A SUMMARY I* (2007).

66. *Id.*

67. *Summary of the State Water Planning Process*, WYOMING STATE WATER PLAN, <http://waterplan.state.wy.us/> (last visited Apr. 21, 2014).

68. *History of the State Water Planning Process*, *supra* note 63; *Directory*, WYOMING STATE WATER PLAN, <http://wwdc.state.wy.us/directory/directory.html> (last visited Apr. 21, 2014).

69. WYOMING WATER DEVELOPMENT COMMISSION, *WYOMING FRAMEWORK WATER PLAN VOLUME I* § 1.3 (2007).

70. *Summary of the State Water Planning Process*, *supra* note 67.

71. *History of the State Water Planning Process*, *supra* note 63.

72. Steve Wolff, Colorado River Coordinator for the Wyoming State Engineer’s Office, Presentation on Wyoming’s Water Plan, University of Denver Water Law Review Symposium (Apr. 18, 2014), available at <http://duwaterlawreview.com/symposium-2014-2/>.

73. *THE WYOMING FRAMEWORK WATER PLAN*, *supra* note 65, at 1.

74. See *River Basin Plans*, WYOMING STATE WATER PLAN, <http://waterplan.state.wy.us/basins/7basins.html> (last visited Apr. 21, 2014).

individual basin plans since the initial reports, while the state has updated others as recently as 2013, 2011, and 2010.<sup>75</sup> The Snake Salt River Basin Groundwater Update is currently in progress.<sup>76</sup>

Although the Wyoming Plan provides for thirty years, Wyoming officials are realizing that the comprehensive plan is lacking in critical areas, such as drought planning. Governor Matt Mead is taking Wyoming's water future into his own hands and moving the state towards a new, more comprehensive water strategy lead.<sup>77</sup> The Governor's new "Wyoming Water Strategy"<sup>78</sup> will take an "overarching look"<sup>79</sup> at Wyoming water use and appears to be completely separate from the Wyoming Plan; the name is not consistent with previous Framework Water Plans and the WWDC's website has no information about a new strategy or plan.<sup>80</sup> Steve Wolff confirmed the division and further noted that those involved with the Wyoming Plan were completely unaware of the water strategy until the public announcement.<sup>81</sup>

The new strategy will "encompass water quality, water law and water infrastructure, all of which are traditionally overseen by separate state agencies."<sup>82</sup> Governor Mead has a 200-page in house document that is a "water catalog of issues"; the issues "deal with water quality, water quantity, interactions and beneficial uses."<sup>83</sup> Beginning in November 2013, Governor Mead held nine listening sessions to better learn how to best use Wyoming's most valuable resource—water.<sup>84</sup> To increase public involvement and in hopes of hearing new ideas and insight, the Governor asked those involved with the Wyoming Plan to stay away from the sessions.<sup>85</sup>

One of Governor Mead's policy advisors notes that Governor Mead wants to create a strategy that will benefit all Wyoming citizens, specifically through baseline water testing and evaluating water quality, something that probably should have already been done.<sup>86</sup> Governor Mead's Natural Resource Policy Advisor notes that the Governor's primary concern is to "ensure [that] we are protecting watersheds and groundwater."<sup>87</sup> Wyoming is recognizing the harsh reality of water scarcity and the increasing consistency of dry years. The state,

75. *See id.*

76. *See Summary of the State Water Planning Process, supra* note 67.

77. *See id.*

78. Press Release, Governor Seeks input on Wyoming Water Strategy, Office of Governor Matt Mead (Nov. 1, 2013), available at <http://governor.wy.gov/media/pressReleases/Pages/GovernorSeeksInputonWyomingWaterStrategy.aspx>.

79. Benjamin Storrow, *Water plan is a Wyoming-wide 'priority'*, CASPER STAR TRIBUNE (Nov. 6, 2013), [http://trib.com/business/energy/water-plan-is-a-wyoming-wide-priority/article\\_d01be756-924c-59f5-a526-fcdab1c52c7d.html](http://trib.com/business/energy/water-plan-is-a-wyoming-wide-priority/article_d01be756-924c-59f5-a526-fcdab1c52c7d.html).

80. *See generally* WYOMING WATER DEVELOPMENT COMMISSION, <http://wwdc.state.wy.us/wwdc.html> (last visited Apr. 21, 2014).

81. Interview with Steve Wolff, Colorado River Coordinator for the Wyoming State Engineer's Office, in Denver, Colo. (Apr. 18, 2014).

82. Storrow, *supra* note 79.

83. Saige Albert, *Wyoming Governor's Office Introduces Plan to Develop new Water Strategy*, WYOMING LIVESTOCK ROUNDUP (July 20, 2013), <http://www.wylr.net/the-roundup/archives/186-water/4307-wyoming-governor-s-office-introduces-plan-to-develop-new-water-strategy>.

84. Press Release, *supra* note 78.

85. Interview with Steve Wolff, *supra* note 81.

86. Albert, *supra* note 83.

87. *Id.*

specifically Governor Mead, is taking steps towards planning for its water future more appropriately and cohesively than in the past. Wolff hopes that the Wyoming Plan and the Water Strategy will be able to merge and provide Wyoming with an even better water plan.<sup>88</sup> Wyoming appears to be taking a more comprehensive approach, like California, rather than a decentralized approach encompassing individual basin plans without cohesively combining them, which they previously relied on with the two Framework Water Plans.

#### D. COLORADO

Colorado, like many other states with water plans, is realizing the necessity for a State Water Plan in hopes of a secure water future. With the Colorado population expected to nearly double by 2050, the current water supply cannot keep up.<sup>89</sup> CWCB Executive Director James Eklund opined that without a comprehensive plan, there will be an even greater supply and demand gap in all Colorado basins than what Colorado is currently experiencing.<sup>90</sup> Until recently, a comprehensive water plan was not considered feasible, but now Colorado knows enough to develop such a plan.<sup>91</sup>

In May 2013, Governor John W. Hickenlooper ordered the CWCB to commence work on Colorado's Water Plan ("Colorado Plan").<sup>92</sup> As stated in the Governor's Executive Order, a Water Plan is necessary to address the water demand and supply gap, Colorado's drought, and purchasing and transferring water rights.<sup>93</sup> The plan, overseen by the CWCB and Mr. Eklund,<sup>94</sup> is meant to be a grassroots effort, building upon eight years of work and 780 meetings around Colorado<sup>95</sup> by Colorado's Basin Roundtables, the Interbasin Compact Committee, and the CWCB.<sup>96</sup> The Statewide Water Supply Initiative ("SWSI") provided the Colorado Plan's foundation by providing the technical foundation describing Colorado's water challenges.<sup>97</sup> Updates to the SWSI will continue to provide a foundation for individual basin plans and the Colorado Plan.<sup>98</sup> SWSI Update 2016 is currently developing.<sup>99</sup>

88. Interview with Steve Wolff, *supra* note 81.

89. Marci Krivonen, *Local Conservation Group Gets Involved with Colorado Water Plan*, ASPEN PUBLIC RADIO (Jan. 30, 2014, 8:49 AM), <http://aspenpublicradio.org/post/local-conservation-group-gets-involved-colorado-water-plan>.

90. James Eklund, Executive Director of the CWCB, Opening Presentation at the University of Denver Water Law Review Symposium: Goals for Colorado's Water Plan: An Overview (Apr. 18, 2014), *available at* <http://duwaterlawreview.com/symposium-2014-2/>.

91. THE COLORADO WATER PLAN, EAGLE RIVER WATERSHED COUNCIL 1, *available at* <http://www.erwc.org/pdf/colorado-water-plan-fact-sheet.pdf>.

92. Colo. Exec. Order D 2013-005 (May 14, 2013).

93. Executive Order, *supra* note 92, at 2.

94. Joe Rubino, *Hickenlooper Legal Advisor James Eklund named Director of Colorado Water Conservation Board*, DAILY CAMERA (June 13, 2013), [http://www.dailycamera.com/state-west-news/ci\\_23455302/hickenlooper-legal-adviser-james-eklund-named-director-colorado](http://www.dailycamera.com/state-west-news/ci_23455302/hickenlooper-legal-adviser-james-eklund-named-director-colorado).

95. Eklund, *supra* note 90.

96. THE COLORADO WATER PLAN, *supra* note 91, at 1.

97. *Frequently Asked Questions*, COLORADO'S WATER PLAN, <http://coloradowaterplan.com/> (last visited Apr. 21, 2014).

98. *See id.*

99. Rebecca Mitchell, CWCB Water Supply Planning Section Chief, Update on the SWSI, Presentation at the University of Denver Water Law Review Symposium (Apr. 18, 2014), *available at* <http://duwaterlawreview.com/symposium-2014-2/>.

Like Wyoming, Colorado will have individual basin plans as well as a comprehensive Water Plan.<sup>100</sup> However, “Colorado will be one of the first states in the country to incorporate grassroots scenario planning and adaptive management into water planning efforts.”<sup>101</sup> Especially given the September 2013 floods, the Plan will prepare for climactic variability by examining water needs for both wetter and drier scenarios.<sup>102</sup> The schedule requires the CWCB present a draft of the Colorado Plan to the Colorado Governor by December 10, 2014 and a finalized draft by December 2015.<sup>103</sup> Consistent with the trend towards frequent updating, the Colorado Plan will be a “dynamic document amended every two to five years.”<sup>104</sup> Linda Bassi, CWCB’s Stream and Lake Protection Section Chief, noted that the Colorado Plan will not be overly specific or detailed, but rather drafted to allow flexibility.<sup>105</sup>

Similar to most other states, the Colorado Plan “must reflect the values and priorities of Coloradans.”<sup>106</sup> The public is able to get involved through local Basin Roundtables, CWCB meetings, emails, an online input form, or on the social networking sites Facebook and Twitter.<sup>107</sup> The Twitter page notes that the Colorado Plan is the first water plan “written by Coloradans, for Coloradans.”<sup>108</sup>

While this all sounds worthy of broad support, some of the members of the Colorado Legislature have received the Executive Order with hesitation. In particular, Senator Gail Schwartz co-sponsored a bill, SB 14-115, that would require the Colorado Legislature to approve the statewide water plan, thereby trumping the Executive Order.<sup>109</sup> As written, the Executive Order hardly mentions the legislature and instead focuses on a collaborative effort between the CWCB and the governor’s office for the Plan’s development.<sup>110</sup> Opposing the bill, Louis Meyer, who serves on the Colorado roundtable, notes that the current method, which Governor Hickenlooper developed, involves those in the Colorado community who would not otherwise “have a voice in the plan.”<sup>111</sup> Meyer further notes that if the grassroots efforts are “overruled by a top-down approach, [it] will lead to cynicism and lack of engagement” by those who do not typically speak up, particularly those from smaller towns from Granby to Grand Junction.<sup>112</sup> Mike King, the executive director of the Colorado Department of Natural Resources, agrees that Colorado “need[s] to depoliticize the

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100. See THE COLORADO WATER PLAN, *supra* note 91 at 2.

101. *Frequently Asked Questions*, *supra* note 97.

102. *Id.*

103. Eklund, *supra* note 90.

104. Dowd, *supra* note 3, at 168.

105. Linda Bassi, CWCB Stream and Lake Protection Section Chief, Presentation at the University of Denver Water Law Review Symposium (Apr. 18, 2014), available at <http://duwaterlawreview.com/symposium-2014-2/>.

106. *Frequently Asked Questions*, *supra* note 97.

107. *See id.*

108. TWITTER: COLORADO WATER PLAN, <https://twitter.com/COWaterPlan> (last visited Apr. 21, 2014).

109. Brent Gardner-Smith, *Schwartz Sponsors Bill to Challenge Water Plan*, ASPEN DAILY NEWS (Feb. 8, 2014), <http://www.aspendailynews.com/section/home/161179>.

110. *See id.*

111. *Id.*

112. *Id.*

development of Colorado's water" and that the Colorado Plan should be "organic" and not subject to political pressures.<sup>113</sup> SB 14-115 was eventually amended in subcommittee, setting forth additional requirements for public hearings and defining a greater role for the legislature, particularly the Water Resources Review Committee, but stopping short of requiring legislative approval of the plan.<sup>114</sup> The Governor signed the bill into law on May 15, 2014.<sup>115</sup>

While many understand the need for a comprehensive water plan in Colorado, there is uncertainty as to the correct planning process and the effect that the Colorado Plan could have on the state's water courts and prior appropriation system<sup>116</sup> Other states vary in their water plan creation; there is no one right answer. However, because water's future is ever-changing, state water plans need to be flexible to change and updated frequently. Most states strongly emphasize public input, and Colorado appears to be doing that on a larger scale than any other state. Colorado is taking a step in the right direction and can look to other states for guidance.

### III. ANALYSIS

Looking at the three water plans discussed here, a general theme is the importance of public involvement with those heading the various plans, specifically through constituent meetings. While some states provide public involvement platforms and others just allow for it, the agency writing the plan should always include public involvement in some way. Each state water plan is overseen by some state-created water board, and Colorado has followed suit with the CWCB.

Where states differ is when it comes to either a more comprehensive or decentralized plan and more specifically what should be included in each plan. California prefers a comprehensive plan, although this is up for debate<sup>117</sup>, while Idaho and Wyoming have both individual basin plans and a comprehensive state plan. This is most prevalent in Wyoming, yet the unsuccessful plan has led the Wyoming Governor to begin creating a comprehensive water strategy without WWDC's input, which would combine water issues presently overseen by separate state agencies. Both the Colorado and Wyoming Governors have taken a large role in water plan development. Colorado has adopted both approaches; each Basin Roundtable develops its own Basin Implementation Plan in addition to the comprehensive Colorado Plan, similar to Idaho. However, there appears to be a greater emphasis on comprehensive planning in Colorado.

Additionally, the California Plan discusses the public trust doctrine and one of Idaho's Plan's goals is public interest. However, public interest has been

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113. *Id.*

114. COLORADO WATER CONGRESS, STATE AFFAIRS WATER BILL SUMMARY (May 7, 2014), available at <http://www.cowatercongress.org/external/wcpages/wcmedia/documents/State%20Affairs/CWC%20Bill%20Summaries.pdf?pid=. .A-74A14B2EE6A2>.

115. SB 14-115, OPEN:STATES, <http://openstates.org/co/bills/2014A/SB14-115/> (last visited May 27, 2014).

116. See email from Matthew Merrill, Partner, White & Jankowski, LLP, to author (Apr. 29, 2014, 17:24 MDT)(on file with *Water Law Review*).

117. See Aladjem, *supra* note 26 (noting that California is moving away from a centralized approach).

rejected by the Colorado Supreme Court because it is in conflict with the prior appropriation doctrine.<sup>118</sup> Conversely, California specifically held, more than ten years prior to the Colorado decision, that although the public trust doctrine and the prior appropriation doctrine were at one point separate doctrines, the two need to be integrated together to take a better look at water resources.<sup>119</sup> This exemplifies how a state's water rights foundation and viewpoint influences the water planning process; each state needs an individualized approach, based on their already established water law principles, to best determine what works in their own state.

Colorado has also taken an innovative approach with its grassroots efforts and decreased legislative involvement. From the beginning, Governor Hick-enlooper's Executive Order to create a water plan varies from what most other states have done, with Wyoming being the exception. States vary in the degree to which the legislatures are involved; the CWC mandated the California Plan, the Idaho Plan is simply an option under the Idaho Constitution, and the Wyoming legislature authorized the plan, but neither state law nor code requires the plan. A mandated water plan may not be necessary, depending on the individual state, but the option to have one, either through a state statute or through a governor, is essential. For a state like Colorado, where water is such a scarce yet vital resource, a mandated plan may be the best option, at least until Colorado can better address the scarcity and supply and demand gap.

However, not all agree that a comprehensive Colorado Plan is necessary. Sarah Klahn, Managing Partner with White & Jankowski, L.L.P., a water law firm in Denver, Colorado, does not believe that now is the right time for a comprehensive plan.<sup>120</sup> Klahn prefers the local, roundtable process.<sup>121</sup> Klahn voiced her concern that once enacted, the Colorado Plan will not be a governing document, as she is unaware of any judicial decisions where a provision of a state water plan affected the outcome.<sup>122</sup> Klahn struggles with converting the roundtables to a state level while also protecting local interests.<sup>123</sup> Hopefully, Colorado will be successful in developing a plan that protects local and state interests.

As there is no one right process, it would be well worth it to see what success the grassroots Colorado Plan could have. If the decreased legislative involvement does not appear to be successful after the recommended two-to-five year update period, then the legislature should revisit something similar to the original content of SB 14-115. For now, especially with the draft deadline approaching in December 2014, if the bill passes, it could certainly delay the enactment and thereby create unwanted, further uncertainty for Colorado's water future.

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118. See *Bd. of Cnty. Comm'rs v. United States*, 891 P.2d 952, 972 (Colo. 1995).

119. See *Nat'l Audubon Soc'y v. Superior Court*, 658 P.2d 709, 732 (Cal. 1983).

120. Sarah Klahn, Managing Partner with White & Jankowski, L.L.P., University of Denver Water Law Review Symposium: Providing a Colorado-based perspective on the New Plan (Apr. 18, 2014).

121. *Id.*

122. *Id.*

123. *Id.*

#### IV. CONCLUSION

States have various methods to create a State Water Plan, but one thing is clear: most western states have a comprehensive plan. Colorado, like other states, is realizing the need to better prepare for its water future. Because water is so unpredictable, any degree of predictability gained through a state plan is better than not having a plan. Colorado can look to California to better understand how to formulate a comprehensive plan and to Wyoming to better understand why a decentralized plan may not be the best option. Putting the State Water Plan in the governor's hands may be a successful technique. Idaho seems to be a combination of California and Wyoming, and Colorado's Plan will focus on climate variability, like Idaho. The Idaho Legislature unsuccessfully attempted to remove every mention of climate variability in Idaho's Plan, yet it seems that climate variability is exactly what a water plan should prepare for: the ever-changing water availability.

Colorado needs to prepare for any situation that may arise, including drought, wildfire, and flooding. Those in charge of creating the Colorado Plan are very passionate about their efforts and hopefully it will pay off. Only time will tell, but Colorado appears to have a good foundation.