



# International Rivers and Lakes

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## **I. East Africa: Region to benefit as the Nile Treaty is reviewed<sup>1</sup>**

The 1929 Nile Treaty that restricted Kenya and the other East African countries in the use of the Lake Victoria waters for large-scale irrigation is being reviewed.

Kenya, Uganda and Tanzania have successfully lobbied for fresh negotiations with Egypt and Sudan, the other users of the waters, Kenya's Water Minister H.E. Mutua Katuku said. "We shall soon be free to use the lake waters as much as we wish," he said. "We shall use it to fill dams and irrigate our farms." He said the final draft of a new treaty would be tabled by a team of lawyers during the last round of the talks in Cairo, Egypt, in July 2006. "We have had four meetings with ministers from Tanzania, Uganda, Sudan and Egypt, and all indications are that we are about to resolve the problem once and for all," he said.

The Minister spoke during the launch of a Sh 1.7 billion (US \$13.6million) water supply and sanitation project in Kisumu town on 19 May 2006, headed by himself and French Ambassador H.E. Hubert Fournier. The project is funded by the French Development Agency, and will be implemented by the Lake Victoria South Water Services Board and the Kisumu Water and Sewerage Company.

Minister Katuku noted that the treaty had caused hostilities among the Nile basin countries. The river, whose source is Lake Victoria, is the lifeline of Egypt. This explains why the North African country has used the treaty to block Kenya, Uganda and Tanzania from using the lake waters for major agricultural activities.

The Minister added: "Many positive gains have been made in the negotiations. The milestone of this is the near-conclusion of the negotiations on the Nile River Basin Cooperative Framework." At the same time, he said the ongoing water sector reforms would continue until Kenya had proper management.

The Government, he said, had this year allocated his ministry Sh 10.2 billion (US \$138.2 million), the highest since independence.

## **II. Bathing water: European Commission starts legal action against eleven Member States<sup>2</sup>**

The European Commission has sent a first written warning to eleven Member States which have been removing bathing sites from their official lists, thereby avoiding EU rules aimed at protecting the health of bathers. The Member States in question are Belgium, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Portugal,

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<sup>1</sup> This article is reprinted from The Daily Nation, Kenya, and was first published 21 May 2006 by a Sunday Nation Correspondent. To see this article in its original format, visit [www.nationmedia.com/dailynation](http://www.nationmedia.com/dailynation).

<sup>2</sup> This article has been adapted from a press release of the European Commission, dated 6 April 2006, reference IP/06/470, Brussels. More information about the Bathing Water Directive is available at [www.europa.eu.int/water/water-bathing/index\\_en.html](http://www.europa.eu.int/water/water-bathing/index_en.html).

Spain and Sweden. About 7,000 bathing sites in total have been affected. Explanations from the eleven Member States are currently lacking, and the Commission has therefore asked them to justify their 'cancellation' of previously recognised bathing sites.

Commenting on the decisions, Environment Commissioner Stavros Dimas said: "The EU Bathing Water Directive is helping to ensure that millions of bathers can enjoy clean bathing water during the summer months. That is why I am concerned that some Member States no longer apply the safeguard measures of the Directive to several thousand bathing waters across the EU. Failing to clean up the polluted bathing sites is against both the letter and the spirit of the Directive."

From the annual bathing water reports submitted by Member States under the EU's Bathing Water Directive (Directive 76/160/EEC, concerning the quality of bathing water), the Commission has observed that, between the early 1990s and 2004, many previously recognised bathing waters were dropped without explanation from the list of monitored bathing areas. The Directive requires Member States to monitor bathing water quality and keep bathing waters free of pollution. The Commission is concerned that some Member States have opted to close bathing sites instead of cleaning them up.

The European Court of Justice has established that so-called de-recognition or de-listing of bathing sites must be properly explained and justified – and should not be a response to water pollution (Case C-307/98, *Commission v Belgium* of May 2000). For this reason, the Commission has sent a first warning letter to the eleven states, asking them to reinstate the bathing waters in question or provide a satisfactory explanation for their deletion.

The Commission has also raised issues about the lack of monitoring of certain bathing waters in Italy, which, although still recognised as bathing waters, are subject to bathing prohibitions. Italy has failed to monitor water quality at 244 sites, where bathing was banned during the year 2004.

If the Commission considers that there may be an infringement of EU law that warrants the opening of an infringement procedure, it addresses a "Letter of Formal Notice" (first written warning) to the Member State concerned, requesting it to submit its observations by a specified date, usually two months.

In the light of the reply or absence of a reply from the Member State concerned, the Commission may decide to address a "Reasoned Opinion" (final written warning) to the Member State. This clearly and definitively sets out the reasons why it considers there to have been an infringement of EU law, and calls upon the Member State to comply within a specified period, usually two months.

If the Member State fails to comply with the Reasoned Opinion, the Commission may decide to bring the case before the Court of Justice. Where the Court of Justice finds that the Treaty has been infringed, the offending Member State is required to take the measures necessary to conform.

### **III. Mekong River Commission countries agree on procedures for Mekong flows<sup>3</sup>**

Senior government ministers representing the four Mekong River Commission (MRC) member countries signed on 22 June 2006 an important agreement regarding flows of the Mekong mainstream. The ministers, representing Cambodia, Lao PDR, Thailand and Viet Nam, endorsed the Procedures for the Maintenance of Flows on the Mainstream at a signing ceremony held in Ho Chi Minh City, Viet Nam.

The ministers in attendance were: H.E. Mr. Lim Kean Hor, Minister of Water Resources and Meteorology, Cambodia, H.E. Mr. Somphong Mongkhonvilay, Minister to the Prime Minister's Office, Lao PDR; H.E. Mr. Yongyut Tiyaipairat, Minister of Natural Resources and Environment, Thailand (and Chairman of the MRC Council 2005/2006); and H.E. Dr. Cao Duc Phat, Minister of Agriculture and Rural Development, Viet Nam. Also present were members of the MRC Joint Committee, the four National Mekong Committees, MRC Secretariat Chief Executive Officer Dr Olivier Cogels and staff from the MRC Water Utilisation Programme (WUP).

The WUP has been involved in helping the four member countries formulate a set of water procedures with support from the Global Environment Facility through the World Bank. The flow procedures are required under the provisions of the 1995 Mekong Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, which formed the Mekong River Commission.

The Agreement requires the member states to cooperate in the maintenance of:

- acceptable minimum monthly flows in the dry season;
- acceptable natural reverse flow of the Tonle Sap Lake during the wet season; and
- prevention of peak flows greater than occur naturally.

The Procedures also clarify the related provisions of the Mekong Agreement through further defining objectives, principles and scope of their application as well as the roles and responsibilities of the various parties required for their implementation, including the MRC Council, the MRC Joint Committee, the National Mekong Committees and the MRC Secretariat. In particular, the Procedures delegate the responsibility to prepare Technical Guidelines for their implementation to the members of the Joint Committee. The Guidelines will define in concrete terms the actual flow and level values and the location of the Mekong mainstream hydrological stations to be used to monitor these flows and levels. The MRC is currently analysing the changes in flow regimes.

### **IV. Taos Pueblo water pact signed<sup>4</sup>**

Indigenous water rights are increasingly recognized around the world. Yet, their recognition may impinge on other water users, outside the indigenous community. The

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<sup>3</sup> MRC Press Release No.07/06, Ho Chi Minh City, Viet Nam, 22 June 2006. For more information, contact Virginia Addison [virginia@mrcmekong.org](mailto:virginia@mrcmekong.org) or visit: [www.mrcmekong.org](http://www.mrcmekong.org).

<sup>4</sup> This article was first published by U.S. Water News Online in June 2006, and is reprinted with their permission. To see the original article, visit [www.uswaternews.com/archives/arcrights/6taospueb6.html](http://www.uswaternews.com/archives/arcrights/6taospueb6.html).

case below illustrates the need for negotiation and third party assistance, when indigenous and external needs collide.

A settlement that defines Taos Pueblo's water rights has been signed, culminating years of negotiations over a lawsuit filed in 1969.

The lawsuit centred around the pueblo's right to water in the Rio Pueblo de Taos and Rio Hondo and involved not only the pueblo, but also the water rights of non-Native American who are land owners in the Taos Valley and state and local governments.

The state engineer's office said the agreement defines Taos Pueblo's aboriginal water rights while compromising on how the pueblo will exercise those rights in a way that protects non-Native American users and future water supplies.

The agreement, signed by Taos Pueblo leaders, state officials, acequia owners and other Taos Valley water users, will cost an estimated \$133 million, most of which is expected to come from the U.S. government.

New Mexico's congressional delegation praised the settlement efforts in the case, known as New Mexico vs. Abeyta. However, Senator Pete Domenici of New Mexico warned that, "In this budget climate, all parties involved must have reasonable expectations."

Negotiations toward a settlement began in 1989 when acequia owners who were not Native Americans approached the Taos Pueblo Tribal Council about the possibility of a compromise.

Nelson Cordova, water rights coordinator for the pueblo, said the talks were not always peaceful. "We at times lost our cool," he said. "We probably said things we should not have said. We said things we retracted. But in the end, I think the humanity we exhibited allowed us to come to a good settlement."

Governor Bill Richardson has promised state funding for the settlement – despite vetoing US\$ 75 million earlier this year for that settlement and another, called the Aamodt lawsuit, involving a 40-year-old water rights dispute.

## **V. Espoo Convention ruling on Bystroe Canal<sup>5</sup>**

On 10 July 2006, a UNECE Inquiry Commission ruled that a controversial Ukrainian construction project, known as the Bystroe Canal, running along the Ukraine-Romania border will have “significant adverse transboundary effects”. The inquiry Commission, which is the first ever convened under the UNECE Convention on Environmental Impact Assessment in a Transboundary context (Espoo Convention) delivered its report in a session attended by UNECE Executive Secretary Marek Belka, as well as the

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<sup>5</sup> UNECE Weekly, Issue No 181 – 17-21 July 2006. To see the original article, please visit: [http://www.unece.org/highlights/unece\\_weekly/current.pdf](http://www.unece.org/highlights/unece_weekly/current.pdf).

Ambassador of Ukraine and the Deputy Permanent Representative of Romania. Both Ukraine and Romania are Parties to the Convention. Under the Espoo Convention, States must notify and consult each other on all planned major projects that are likely to have a significant negative environmental impact across a national border. The current dispute arose when Ukraine began construction on Phase I of its Bystroe Canal Project without notifying Romania. Disagreeing with the Ukrainian position that the project had no transboundary effects, Romania requested an inquiry under the guidelines of the Espoo Convention in August 2004.

Construction on the canal has garnered international attention from many countries, NGOs, and other environmental advocates because of its location on the Danube Delta, which is home to UNESCO Biosphere Reserves and a World Natural Heritage site.

To evaluate the effects of the Bystroe project, a team was assembled with experts from both countries and from many professions including: NGO staff persons, scientists, private consultants, and government researchers. In conducting its assessment, the Commission identified 24 possible detrimental effects of the construction project. In many cases, a lack of sufficient data prevented the Commission from making definitive causal links. However, the research team was able to identify six transboundary effects that were likely to be significant and adverse. Among these effects were: long-term and large scale impacts on fish due to repeated maintenance dredging of the canal; loss of habitat for birdlife and fish; and increased turbidity of the marine waters at the mouth of the canal.

To ameliorate political tensions surrounding the decision and to address some of the “gaps in knowledge” that the research team encountered, the Inquiry Commission also recommended the creation of a bi-national research programme to focus on evaluating the proposed navigations route and mitigations measure. The Commission suggested that funds for this recommended programme should be organized via the secretariat of the Espoo Convention.

## **VI. United States-Canada: Committee drafts allocation proposals for river water<sup>6</sup>**

A U.S.-Canada committee has drafted proposals intended to help ensure fairness in the allocation of water from the St. Mary-Milk River system near the Montana-Alberta border.

The committee was established in 2004 after Montana officials contended too little of the water went to the state's irrigators and other consumers. Alberta's environmental agency said the province took no water to which it was not entitled.

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<sup>6</sup> This article was first published by U.S. Water News Online in April 2006, and is reprinted with their permission. To see the original article, visit [www.uswaternews.com/archives/arcpolicy/6u.s.cana4.html](http://www.uswaternews.com/archives/arcpolicy/6u.s.cana4.html).

Proposals of the International St. Mary-Milk Rivers Administrative Measures Task Force are in a technical, 125-page report that was just released.

The St. Mary River originates in Glacier National Park, and flows from Montana into Alberta. The Milk flows from Montana into Alberta, then back into Montana. The St. Mary Canal in Montana links the rivers, which provide water for various uses on both sides of the border.

The International Joint Commission, which works to prevent and resolve water disputes between the United States and Canada, appointed the committee. It was instructed to examine procedures set forth in a 1921 order that controls sharing of St. Mary-Milk water. The International Joint Commission said it wanted a report explaining how the order could be improved.

The committee's proposals include improving calculation of the rivers' flows.

Co-chairmen of the committee are Daniel Jewell, the U.S. Bureau of Reclamation's top official in Montana, and Ross Herrington, a senior water policy adviser for Environment Canada.

## **VII. Israel and Turkey: Landmark water agreement put into deep freeze<sup>7</sup>**

Israel and Turkey have suspended what was meant to be a breakthrough deal – shipping water in huge tankers from Turkey to the parched Holy Land. Both governments have concluded the deal is not feasible, but hope to revive it in the future.

Under the 20-year agreement, signed two years ago, Turkey was to ship 50 million cubic metres of water annually from its Manavgat River. The deal was to alleviate Israel's chronic water shortage and cement its relations with an important Muslim ally. Turkey was to boost its position as a regional power.

Israeli Foreign Ministry spokesman Mark Regev said recently that the agreement was put on hold because high oil prices had made it impractical to ship the water in large tankers. Privatisation of Turkey's Manavgat water-treatment facility also contributed to the higher costs, he said.

Regev said the two countries would continue looking at other options, including building a water pipeline. The decision to suspend the project was not connected to the recent visit of Hamas leaders to Turkey, he added. "The political relationship with Turkey is good," he said.

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<sup>7</sup> This article was first published by U.S. Water News Online in April 2006, and is reprinted with their permission. To see the original article, visit [www.uswaternews.com/archives/arcglobal/6israturk4.html](http://www.uswaternews.com/archives/arcglobal/6israturk4.html).

In Ankara, officials at the Turkish Foreign Ministry confirmed the project is now on hold and that the idea of a pipeline would be explored. But experts say it could be years for a pipeline to materialize. In addition to cost considerations, such a project would possibly require involvement of Lebanon or Syria, which have tense relations with Israel.

Water experts said the deal would have provided only a small percentage of Israel's water needs. Critics have said the plan, going back more than five years, was motivated more by politics than economics.

"From the time of the first bids, it was clear you could not bring water of drinking quality from Turkey at an affordable price," said Shaul Arlosoroff, a water expert and member of the board of Mekorot, Israel's national water carrier. "There were other reasons for Israel to maintain connections and dialogue with Turkey. The issue of economics was not the decisive issue," he said.

Arlosoroff said the chances of building a pipeline deal are very low, especially now that Israel has opened a new desalination plant in the port city of Ashkelon with a second plant in the works. Israel also has reduced its water needs through expertise in drip irrigation and recycling waste water for agricultural use.

"I would not buy stock in the company that has to bring water from Turkey to Israel," he added.

## **VIII. Malaysia: Water to fall under World Trade Organization (WTO) regime?<sup>8</sup>**

Malaysian activists have expressed concern that two bills before Parliament could pave the way for giant transnational corporations to corner significant stakes in the country's domestic water sector.

The two bills – the Water Services Industry bill and the National Water Services Commission (or SPAN, its Malay acronym) bill – would transfer control of water from the various States to a federal-level regulatory authority. The government says this would ensure that all Malaysians have access to affordable and clean, treated water.

Civil society activists, however, fear that unless the bills clearly stipulate that water will remain under state control, the sector could be increasingly vulnerable to foreign takeovers.

Multinational water giants are now said to be moving away from developing countries after incurring heavy losses and facing formidable obstacles, including civil society protests over soaring tariffs.

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<sup>8</sup> 'Water falls under WTO regime?' by Anil Netto is reprinted from Inter Press Service (IPS) Asia-Pacific, 5 May 2006. To see the article in its original form, visit: [www.asiawaterwire.net/node/259](http://www.asiawaterwire.net/node/259).



But they remain interested in specific regions where they see a strong potential for assured profits. Unlike places such as Jakarta and Manila, Malaysia could prove to be a safe magnet for these multinational firms, as state-owned water authorities here have been making profits, despite the constraints they face.

Economist Charles Santiago, coordinator of the Coalition Against Water Privatisation (CAWP), pointed out that the European Commission (EC) had already requested Malaysia to open up its water sector under the General Agreement on Trade in Services (GATS).

Malaysia is the European Union's second largest trading partner in South-East Asia. GATS, which came into effect in 1995, falls under the umbrella of the World Trade Organisation (WTO) and covers a range of services such as health care, education and water. It aims to phase out all "barriers" to international competition in a country's services sector and to promote effective "market access."

The EC's request to Malaysia was contained in a confidential document titled 'GATS 2000 Request from the EC and its Member States to Malaysia' in early 2002. It was subsequently leaked and published on a couple of websites, including GATSwatch, a joint project of the Corporate Europe Observatory and Transnational Institute, both based in Amsterdam.

In the document, water falls in the category "Water for human use and waste water" under the heading "Environmental services", one of 12 sectors in Malaysia the EC wants liberalised. The EC asked Malaysia to "take commitments under MA (market access) and NT (national treatment)" with respect to water.

The principle of "market access" exerts pressure on developing countries to provide guaranteed and irreversible access to their domestic sector. Critics say such access wipes out many government policy options and reduces the scope for democratic authority over these services. "National treatment", one of the basic tenets of 'free trade', bars governments from favouring their domestic sectors over foreign firms.

The EC also said the requirement for foreign firms to seek approvals for significant investments is a restriction that it wants removed. Such approvals are a key national regulatory tool to ensure that foreign investments serve Malaysian interests.

Campaigners warn that if the Malaysian authorities confine the award of licences to local water firms only, this could also be construed as violating GATS, no matter what parliament here or SPAN might say. "Foreign companies will argue that the (water) bills are trade restrictive and thus violate GATS rules," said opposition Leader Lim Kit Siang in his blog. "They will argue that the powers given to the minister are far reaching, including non-transparent decision-making, and that the bill is a trade barrier."

Minister for Energy, Water and Communications Lim Keng Yaik sought to dispel fears of a takeover by foreign firms. "The Government is firm that Malaysia will not liberalise

the water industry as it is considered a basic utility and should not be opened for international market forces to determine," he said.

Under the bills, a new National Water Assets Management Company (Wamco) would be set up to buy up all existing water infrastructure. Owned by the Finance Ministry, Wamco would then raise low-interest funds to finance the acquisition and the building of infrastructure, which will then be leased to state-owned or private operators.

Water Minister Lim also stressed that consumer interests would be represented through a proposed 'Water Forum'. There would be no more automatic water tariff hikes for private concessionaires and any proposal to increase tariffs would be scrutinised by SPAN, which would consider the views expressed by the forum with cabinet having final say.

All the same, private firms will be eyeing the budget of 16 billion ringgit (US\$ 4 billion) that the government intends to spend on upgrading the country's water infrastructure over the next five years.

"Lim can say anything he wants, but it will have no significance to WTO discussions where trade-offs between countries are the norm," Santiago warned. "The only way the country can ensure that water does not fall under our GATS commitment would be to ensure that water is provided as a government service."

## **IX. Uruguay's President defends controversial pulp mills<sup>9</sup>**

President Tabare Vazquez held a nationally televised briefing to defend two wood pulp plants being built in Uruguay that have provoked protests in neighbouring Argentina, declaring the mills environmentally sound.

Protesters and environmentalists claim the two plants being built just across the Uruguay River will pollute Argentine farmlands and damage tourism along the river. Uruguay insists the project – the biggest investment in its history – is environmentally sound.

Argentine President Nestor Kirchner held his own "town hall" style meeting May 5 near his country's border with Uruguay to voice growing dissent with the project, saying he awaited an environmental study proving it would not pollute the border river.

But in his televised briefing, Vazquez defended the two sprawling plants being built near Fray Bentos, Uruguay, saying they would count on state-of-the-art technology. He said any pollution would remain within internationally acceptable limits and that his country was not handing the Finnish and Spanish consortiums in the project a 'blank check.'

Applauded as he spoke in the Liberty Building housing the executive branch, Vazquez also said his small South American country has always insisted on dialogue to peacefully settle disputes.

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<sup>9</sup> This article was first published by U.S. Water News Online in June 2006, and is reprinted with permission. To see the original article, visit [www.uswaternews.com/archives/arcglobal/6urugpres6.html](http://www.uswaternews.com/archives/arcglobal/6urugpres6.html).

Outside, some 300 people protested against the pulp mill projects, kept back from the building behind police barricades.

Argentina and Uruguay have been feuding for months over Uruguay's plans for the two plants, which are expected to create hundreds of jobs and pump millions of dollars annually into the economy.

The two pulp mills are being built for a total of US\$ 1.8 billion (Euros 1.42 billion) – the biggest investment project in the history of Uruguay. One of the plants is being built by Finnish consortium Metsa-Botnia Oy and the second by Spain's Grupo Empresarial ENCE.

Earlier, Argentina announced it had filed a claim against Uruguay before the International Court of Justice at The Hague, arguing that Uruguay did not provide enough time for a thorough environmental impact study.

The pulp mill feud has damaged traditionally warm ties between the two nations. Meanwhile, Uruguayan officials claimed months of blockades of bridges on the border earlier this year by Argentine protesters caused some US\$ 400 million (Euros 317 million) in damages from lost trade.

## **X. Book: Integrated Transboundary Water Management in Theory and Practice: Experiences from the New EU Eastern Borders<sup>10</sup>**

Authors: Geoffrey D Gooch, Per Stålnacke

This book examines and analyses the problems inherent in integrated water management in transboundary conditions, and provides new knowledge and policy recommendations based on the experiences and results of a major 3-year interdisciplinary research project (MANTRA-East).

Drawing on extensive studies of the Lake Peipsi region in Estonia and Russia, the book explores the political and social issues surrounding transboundary water management and introduces the way that qualitative-quantitative-qualitative scenarios have been used in real-life situations.

The book presents conclusions and policy recommendations for integrated transboundary water management that will be invaluable to water managers, policy-makers and academic researchers working in this rapidly expanding field.

Publication Date: July 2006, 256 pp, ISBN: 1843390841

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<sup>10</sup> This summary was first published by IWA Publishing and is reprinted with permission. To see the summary in its original format, visit <http://www.iwapublishing.com/template.cfm?name=isbn1843390841>.

## **XI. Book: Regulatory Frameworks for Water Resources Management: A Comparative Study<sup>11</sup>**

Authors: Salman M. A. Salman, Daniel Bradlow

This book deals with the regulatory frameworks for water resources management. It traces the relevance and importance assigned to water legislation by the different international conferences and forums, including the United Nations Water Conference (Mar del Plata, Argentina, 1977), the International Conference on Water and the Environment (Dublin, 1992) and the United Nations Conference on Environment and Development (Rio de Janeiro, 1992). It also draws on the guidance provided by those conferences for preparing such legislation.

The book surveys the regulatory frameworks for water resources management in 16 jurisdictions, based on certain key elements. Those jurisdictions represent countries from each of the regions of the world, including developed and developing countries, as well as common law, civil law and Islamic law systems. The key elements examined in each jurisdiction include the underlying principles and priorities, regulation of water uses, protection of water, regulation of water infrastructure, institutional and financial arrangements, enforcement of regulations and dispute resolution.

The book also presents a comparative analysis of these regulatory frameworks based on the same key elements. The analysis examines the main similarities and differences in the approaches adopted by the jurisdictions selected. The book goes on to highlight the essential elements that need to be addressed in any regulatory framework for water resources management, and identifies emerging trends in water legislation. The conclusion of the book underscores the relevance and importance of the regulatory framework for water resources management, and specifies conditions supporting its utility and efficacy.

Law, Justice, and Development Series, The World Bank, 2006  
ISBN 13: 978-0-8213-6519-9

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<sup>11</sup> This summary was adapted from the Abstract found at the beginning of the book. To read the Abstract in its original form, see the book online at <http://lysander.worldbank.catchword.org/vl=2277294/cl=19/nw=1/fm=docpdf/rpsv/bk/wb/0821365193/v1n1/s1/p1>.