New Mexico Regional Water Planning
Governance Study Group
Issue Paper

Strengthening Linkages

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The Problem - One inhibitor of effective water planning and management across the State of New Mexico is the widespread phenomenon of weak or missing linkages between components in water planning and in water management chains. The weak links prevent us from achieving the level of effective planning and management of water that New Mexico's citizens deserve.

Overview of Issue Paper – We have identified 23 weak or broken linkages and placed them within 5 categories. For each category or linkage, we have described the problem and presented the skeleton of a possible remediation strategy. Some of the broken linkages are addressed to a greater or lesser degree in other issue papers. However, until there is a remedy in place, they are still included here. The categories and linkage names are:

A. Plan Development Disconnects –
1. *Public involvement inputs and content within resultant plans*
2. *Planning and minimally-represented entities*

B. Disconnects among Water Plans –
1. *State water plan with tribal water plans*
2. *Regional water plans with the state water plan*
3. *Local government water plans with their regional water plans*
4. *Regional water plans with their adjacent region water plans (including those in neighboring states, foreign or domestic)*
5. *Local water plans with their adjacent local water plans*

C. Water Plan Disconnects with other Discipline Plans –
1. *Forest and range management plans (federal, state, and tribal)*
2. *Environmental protection plans (state and tribal)*
3. *Transportation plans (regional and state)*
4. *Land use plans (local and tribal)*
5. *Economic development plans (local, regional, tribal, and state)*

D. Disconnects between Water Planning and Administration –
1. *Water plan recommendations and resulting implementation actions*
2. *Water plan recommendations and affected water ownership*
3. *Interstate Stream Commission mandates and Office of the State Engineer regulations*

E. Disconnects on Permission to Use Water –
1. *Ground water regulations and surface water regulations*
2. *Water permissions (rights, permits, etc.) vs. available wet water*
3. *Water permissions (rights, permits, etc.) vs. actual water uses*

4. *Inconsistencies among and within entities' water accounting principles and methods*
5. *Permitting domestic wells and urban groundwater uses in an over-allocated, unadjudicated basin versus administering the water for the benefit of senior water right holders*
6. *Reconciling 24/7 requirement for transferred water with drought dependent prior use*
7. *Regional public welfare considerations and OSE water transfer decisions*
8. *Water quality and quantity considerations*

Overall Recommendation - We recommend that the presented skeleton strategies for strengthening each of the weak links be fleshed out and then implemented. We further recommend that the progress be monitored to assure that the resultant strategies are indeed followed. However, we also acknowledge that alternative strategies may prove even more effective.

The Weak Linkages or Disconnects – New Mexico has various regulatory regimes and plans for water and other attributes existing and being developed around the state. Frequently, plans that could affect each other are developed without sufficient consideration of possible connections. We should create mechanisms that will drive planners to give due consideration to the efforts and results of others' planning activities. There are also disconnects associated with regulatory permissions to use water. These should be explicitly addressed through the planning processes. Following are the weak links that we have identified and believe should be addressed:

A. Plan Development Disconnects – We have regularly observed disconnects in the planning processes in two areas:

1. *Public involvement inputs and content within resultant plans* – Very frequently we have seen public comment on water (and other) planning taken in a pro forma way, and then effectively ignored. The comments are often not recorded. When recorded, they are merely listed in an appendix to the presented plan.

   We recommend that agencies responsible for planning be required to explicitly address each recorded public comment, stating how or where it was incorporated into the plan, or why it was not incorporated.

2. *Planning and minimally represented entities* – In every planning effort, we have seen that some entities are not well represented, despite efforts by the planning entity to obtain representation.

   We recommend that planning entities be required to identify insufficiently represented constituencies, and to explicitly address how that entity's concerns have been duly considered in the plan, or why their concerns have been omitted. From our observations of regional water planning, the most frequently omitted constituencies and interests include future generations, riverine environments, aquifer sustainability, water rights holders, and tribal governments.

B. Disconnects among Water Plans – In New Mexico, regional water planning is disconnected from other activities. It is not linked to other relevant planning processes or to implementation of policies or projects. Moreover, we have regularly observed that water plans have been developed in a way that is effectively oblivious to the existence of other water plans. That leads to inconsistencies and even conflicts among plans. One result is that the plans are difficult, if not

impossible, to implement and are not taken very seriously after they are developed. They become difficult, if not impossible, to implement.

We recommend that water planning entities be required to explicitly describe the efforts that have been taken to avoid conflict and ensure consistency with adjacent water plans and with higher level water plans. Particular disconnects to be addressed here are those between:

1. *State water plan and tribal water plans*
2. *Regional water plans and the state water plan*
3. *Local government water plans and their regional water plans*
4. *Regional water plans and their adjacent region water plans (including those in neighboring states, foreign or domestic)*
5. *Local water plans and their adjacent local water plans and tribal water plans*

C. *Water Plan Disconnects with other Disciplines' Plans* – Across the state there are important plans being developed to address topics other than water. Frequently, water planning entities are unaware or dismissive of these external topic plans. While sometimes there is no coupling, more frequently these other plans make implicit or explicit assumptions about water.

We recommend that water planning entities at all levels be required to make contact with the relevant other-topic planners and explicitly describe how they have worked together to assure consistency, lack of conflict and accounting for cumulative impacts. At a minimum, the other-discipline plans include:

1. *Forest and range management plans (federal, state, and tribal)*
2. *Environmental protection plans (state and tribal)*
3. *Transportation plans (regional and state)*
4. *Land use plans (local and tribal)*
5. *Economic development plans (local, regional, tribal, and state)*

D. *Disconnects between Water Planning and Administration* – Within New Mexico's water management, there are frequent mismatches between decisions and resultant actions. Frequently there are systemic causes of the mismatch. We have further observed that particular connections are often ignored or given short shrift.

1. *Water plan recommendations and resulting implementation actions* – Once New Mexico's regional water plans are completed, implementation tends to fall by the wayside, and the plans simply collect dust on a shelf. It makes one wonder why resources should be spent on water planning

   We recommend first that adherence to water plan recommendations be statutorily mandated and enforceable, at all levels of water plans.

   We recommend further, that water planning and water providing agencies be required to regularly schedule funds to support implementation of the water plans they have sponsored or accepted.

2. *Water plan recommendations and affected water ownership* – Water plans frequently

recommend distributions of water and/or ways of using water without consideration of who owns the rights to that water and/or how such owners might be encouraged to comply with the plans' recommendations.

We recommend that regional water planning must include ownership as part of the analysis, and that water planning entities be required to explain how the recommendations can be accomplished while recognizing that water rights are property.

3. *Interstate Stream Commission mandates and Office of the State Engineer regulations* – We have observed cases where the Interstate Stream Commission obligation to meet interstate compacts conflict with the State Engineer regulations on permissions to use water, particularly mining of groundwater. We've observed cases the mismatches have impacted regions.

   We recommend that an official team be appointed to identify such conflicts between ISC obligations and OSE regulations, and to propose appropriate regulatory (or statutory) changes to ameliorate the conflicts.

E. Disconnects on Permissions to Use Water –There are also weak linkages associated with permission to use water, typically associated with paper water vs. wet water. These links should be strengthened through the planning processes. At least the following specific weak linkages should be addressed:

1. *Ground water regulations and surface water regulations* – Since groundwater regulations were developed later than surface water regulations, and appear in separate chapters of the statutes, we have observed inconsistencies or conflicts between the two regulatory regimes, despite the statutory requirement to conjunctively manage our water resources. As examples, the rules of priority administration lead to such anomalies as futile priority calls, and junior users being able to drain the supplies of senior right holders. Planners need to understand a clear and consistent set of rules for administration.

   We recommend that an official team be appointed to identify such conflicts and to propose appropriate statutory or regulatory changes to ameliorate the conflicts.

2. *Water permissions (rights, permits, etc.) vs. available wet water* – Historical decisions and lack of adjudication has resulted in more perceived permissions to use water that there ever has been wet water. The mismatch and its associated degradation to credible water accounting impacts regional water planning. Adjudication to resolve the mismatch is seen to require insurmountable quantities of money and time. In some basins, more water rights have been claimed and/or the state has issued far more paper permits to use water than exists in that basin. The mismatch leaves water users in a situation where adjudication of water rights and permits would result in most users getting less water than they thought they had. It clearly provides a disincentive for claimants to consummate adjudication. In fact, it creates an incentive for claimants to inject delays and additional costs into the adjudication process.

   We recommend that the state publish an accounting, basin by basin, of the permits and rights issued or claimed, to be included in the associated Regional Water Plan.

We recommend further that the state institute a positive incentive for water rights claimants to consummate adjudication promptly.

3. *Water permissions (rights, permits, etc.) vs. actual water uses* – While there have been improvements, many uses of wet water are not measured. That means that water right and permit holders' actual uses cannot be compared with their respective permissions. The result is likely to be significant under or over use. Regional water planning baseline data is impacted.

   We recommend that metering be required on all uses, and that the state (or other appropriate district) establish a regular automated comparison between permissions and actual uses. Furthermore, consumptive uses from all users must be measured and quantified. The resultant data should be provided to the regions on a regular basis for inclusion in the regional water plans.

4. *Inconsistencies among and within entities' water accounting principles and methods* – We have observed in many cases where water accounting methods are less than satisfactory, and certainly not consistent among entities. We have seen wet water measures added to paper water measures; we have seen additions of depletions and withdrawals; we have seen the same drop of water allocated to several entities.

   We recommend that the state establish, promulgate, and ensure adherence to a set of "generally accepted accounting principles" for water, including standard definitions, for local entities to report their water plans and uses as well as for the regions to use in their water planning.

5. *Permitting domestic wells and urban groundwater uses in an over-allocated, unadjudicated basin versus administering the water for the benefit of senior water right holders* – We have observed cases where an accretion of domestic well permits in an area has had an impact on the availability of surface water for senior water rights holders and where junior urban permits have impacted senior users. The resulting uncertainty in who can do what impacts effective planning for water deployment.

   We recommend that all junior groundwater permit users be subject to restrictions in use, especially during drought conditions.

6. *Reconciling 24/7 requirement for transferred water with drought dependent prior use* – When water rights are transferred from surface agricultural use to urban groundwater use, we convert that particular demand from being drought dependent to being independent of potential drought. That new inflexibility of demand impacts the state's drought resiliency.

   We recommend that the State provide the regions with tools to deal with that hardening of demand.

7. *Regional public welfare considerations and OSE water transfer decisions* – Statutes require the state engineer to take cognizance of "public welfare of the state" when evaluating potential water right transfers. However, the ISC has required regions to include a statement

of public welfare for the region, not the state, in their regional water plans.

We recommend that a statutory change be made to require consideration of "public welfare of the region," and that the state engineer be required to explicitly address that consideration in his decisions.

We recommend further that a committee of regional water planners and ISC work to develop a template of what a regional public welfare statement should address.

8. *Water quality and quantity considerations* – We've observed cases where water quality attributes affect water quantity and where water quantity attributes affect water quality, both cases affecting regional planning.

   We recommend that NMED and OSE planning for water be coupled.

Topics for Fleshing Out the Strategies – We have above provided some introductory guidance or skeleton material for each of the weak links or disconnects that we have identified. We recommend that these weak linkages be formally addressed in appropriate frameworks, perhaps the Regional Water Plans and/or the State Water Plan.. For each weak link, we recommend further that at least the following topics be covered for each:

a. Title for the link that is weak or missing
b. Description of the link that is weak or missing
c. Consequences of the link being weak or missing
d. Remedial actions or series of actions that can and should be taken to strengthen the link
e. Entities that can and should take the lead in causing the actions to take place
f. Entities that can and should have subordinate roles in supporting the actions
g. Recommended time frames and estimated costs for the remedial actions