

**New Mexico Regional Water Planning
Governance Study Group
Issue Paper**

Tribal Participation

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The involvement of federally-recognized tribes in New Mexico (Pueblos, tribes, and Native nations)¹ in regional or state water planning can benefit the regions, the state, and also the tribes, by establishing opportunities for discussion and collaboration. This coordination can have many positive impacts: it is essential for cross-jurisdictional or “transboundary” projects such as watershed restoration and water quality protection; it can enhance feasibility and improve funding for water infrastructure projects; it may contribute multiple forms of knowledge and generate creative new ideas; it can reduce unpleasant future surprises (Innes 1999); and it can enhance the capacity and resilience of governance systems (Inner and Booher 2003).

Issues with Tribal Participation in Water Planning

However, despite these benefits, and the great importance of water to tribes, some choose to not participate in regional and state water planning or to participate on their own terms (Hausam 2013). As sovereign entities, tribes are not required to participate, and they may avoid such planning processes for a number of reasons.

Plans that include multiple jurisdictions, such as regional and state plans, must by necessity find a balance among all participants’ interests. This sometimes results in only cursory mentions of certain critical issues for tribes: sovereignty, tribal water rights, interconnected natural systems, and cultural values. Listing tribes as participants in plans that do not truly meet their needs and that they cannot truly endorse could have the effect of co-opting them into agreement (see Amy 1983, Arnstein 1969).

Tribal participation often requires more resources than non-tribal participation. Tribal water planning cannot be completely separated from tribal water rights, so attorneys are typically involved. Other tribal participants must weigh the time and energy required for water planning against multiple other priorities. Persistence is often needed to be recognized as not being a “local government” (a subdivision of the state; see Dolan and Middleton 2015, 396); to gain seats at the table for each unique tribal government; and then to shoehorn tribal perspectives into models that do not automatically recognize them. More time is needed to travel to meetings off tribal lands.

In some cases, participation may require compromises that tribes are unwilling to make, such as signing formal agreements. In California, some tribes have been required to sign agreements that require partial waivers of sovereign immunity in order to participate in regional water planning

¹ Hereinafter listed as “tribes,” referring to the legal term “federally-recognized tribes.”

(Dolan and Middleton 2015, 363). In New Mexico, some tribes have been unwilling to join another type of regional planning organization because its bylaws require sharing planning documents, which for tribes are proprietary, not public, information (Hausam, pers. obsv.).

All participants must believe that planning will lead to meaningful results in order to remain engaged with the process. Yet tribes have many reasons to be pessimistic about state-driven processes such as water planning (see, e.g., Wondolleck and Yaffee 2000):

- Histories with non-natives that include losses of land, water, culture, and lives
- Ongoing losses of “wet water” while “paper water” remains adjudicated
- The current New Mexico political climate, which some perceive to be unsupportive of tribes
- Alternatives independent of the state, working directly with the federal government
- Limited state implementation of water plans in the form of projects, programs, and policies, particularly those that benefit tribes²

Successful Efforts

Despite these challenges, there are examples of successful coordination with tribes on water projects and policies. A recent assessment of Integrated Regional Water Management in California found that one participating tribe made a voluntary water transfer to a non-tribal utility district, founded on a long-standing relationship of mutual respect based in other projects. The transfer occurred through a Regional Water Management Group, but the authors note that “without that foundation, the water transfer and the limited waiver of sovereign immunity would never have succeeded” (Dolan and Middleton 2015, 395).

In New Mexico, over forty years of tribal and non-tribal effort and negotiation have resulted in an agreement and commitments by federal, state, and municipal government to fund construction of the Navajo-Gallup Water Supply Project. Tribal and non-tribal parties along the Rio Jemez acknowledged their interwoven histories and interdependence and worked together to create a shortage-sharing agreement among the Pueblos of Zia and Jemez and the Jemez River Basin Water Users’ Association (Robert 1996). Most recently, the Pueblo of Sandia donated 100 acre-feet of water to support the Middle Rio Grande’s stream flow, “in hopes it can be example of what can be done when people work together” (Associated Press 2015).

There are also examples of successful approaches to tribal participation in New Mexico’s regional water planning, as directed by state law (N.M. Stat. Ann. §72-14-44.C(2)). In the Northwest New Mexico and Jemez y Sangre planning processes conducted in the late 1990s, tribes were involved as “observers,” allowing them to discuss important issues without committing to the final plan (Hausam 2013). Northwest New Mexico also created a technical committee that included tribal hydrologists and other specialists.

The New Mexico state water plan also requires “(1) coordination or integration of the water plans of Indian nations, tribes and pueblos located wholly or partially within New Mexico with the state water plan; and (2) final adjudication or settlement of all water rights claims by Indian

² There are certain exceptions benefitting specific tribes, such as the Navajo-Gallup Water Supply Project.

nations, tribes and pueblos located wholly or partially within New Mexico (N.M. Stat. Ann. §72-14-3.1.E).

There is a body of literature on successful collaboration (sometimes under the headings of collaborative planning, conflict resolution, and co-management) (see, e.g., Innes 1994), with some attention to tribal participation. The role of planners in improving collaboration includes defining and structuring the planning process, framing issues, helping a group develop ground rules, gathering information and managing data, and helping a group reach agreement on the final plan. Planners can and should consider facilitating tribal involvement as part of their work (Hausam 2006). The state's responsibility is to fulfill its government-to-government relationship through consultation with tribes. States can also play critical roles in defining the structure of planning processes and framework for planning documents, and in preventing local or regional relationships, whether currently absent or adversarial, from precluding tribal participation (Dolan and Middleton 2015; also see Lane and Corbett 2005).

Suggested Improvements

We recommend that the State of New Mexico take action to improve opportunities for tribal participation.

The first step in this effort must be meaningful consultation with tribal governments under the New Mexico State-Tribal Collaboration Act. This consultation should include an explicit discussion of improvements that might support tribal participation in regional water planning. Some opportunities for discussion might include:

- Creating a new form of tribal representation on water planning committees, mandatory in each region with tribes. For example, there could be an open “observer” seat for each tribe within a water planning region, similar to an “ex officio” seat but with the ability to vote if desired.
- Designing water planning processes with opportunities to build relationships over time. This could include longer time to complete water plans, more opportunities during meetings to engage in dialogue, education about tribal and other values for water (within or outside the planning process), or other approaches
- Structuring planning committees to encourage participation from staff with multiple knowledge areas. For example, regions could institute technical committees that encourage participation from hydrologists, demographers, planners, tribal elders, and others (from tribes and other jurisdictions).
- Designing water planning processes to explicitly incorporate tribal information and traditional knowledge. Tribal information about water demand may reflect goals to have tribal members living on their homelands; the overwhelming need for economic development to support tribal populations; cultural values and uses of water; and other needs. Traditional knowledge can contribute to alternatives and action steps.
- Requesting agenda items for meetings from tribes (and other committee members) in advance of meetings.

- Reducing inequities in the resources necessary to participate in water planning. For example, hosting meetings in varied locations, including on tribal lands, so that the distance and travel for participants for each meeting varies; and contributing to the cost of tribal participation in state planning processes.
- Working collaboratively to implement projects listed in plans that will benefit tribes. This can help demonstrate the effectiveness of water planning. Projects could be regional in nature or for specific tribes, in a good-faith show of commitment. Examples may include watershed management, stormwater control, and regional water supply systems (such as the Navajo Gallup Water Supply Project).
- Enhancing the role of the tribal liaison in the New Mexico Office of the State Engineer for more effective communication with tribal governments and in state-tribal meetings.
- Developing a mechanism for ongoing consultation regarding tribal involvement in state-driven water planning processes to ensure that the design of future processes reflects tribal needs.

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