

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

**Governance and
Institutional Arrangements**
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The Situation

A (or maybe *the*) major weakness of regional water planning stems from the initial lack of clarity about who and what constitute water planning “regions” (or as the ISC has sometimes called them, without further explanation, “regional entities”). What did the water planning statute §72-14-43 mean to “allow” a “region” to “plan for its water future”? Who was to do the “allowing”? By what criteria would it be determined that a self-defined region had “sufficient hydrological and political interests in common to make water planning feasible”? What sort of structure could assure that all significant stakeholder interests would be adequately represented? None of these questions was addressed in the 1987 legislation. Even partial answers had to await the collaborative work of the Regional Water Planning Dialogue (now the New Mexico Water Dialogue) with a planning committee of the ISC to create a Regional Water Planning Handbook in 1994.

Beyond boundary and representation issues, scant attention was paid to the broader purposes regional water planning could or should serve. True, planners would document water needs, showing disparities between current supply and likely future demands, and suggest strategies for reducing or eliminating the “gap.” All this, as well as additional information – economic projections, legal issues, demographic changes, etc. – were to be compiled into a regional water plan to be “accepted” by local jurisdictions in the region and, finally, by the Interstate Stream Commission (ISC). Such acceptance, however, did not imply that any elements of the plan would ever be carried out by agencies responsible for developing and providing actual water to users in the region. Moreover, with completion and acceptance of the plan document, it was commonly assumed that the regional planning “entity” would have finished its work and could be disbanded. Before the initial plans’ completion, State funding was intermittent and often inadequate, reflecting the Legislature’s ambivalence about the value of RWP. Following the ISC’s acceptance of a region’s plan, State support ended. No ongoing role for the entity was envisioned, nor was monitoring of the RWPs contemplated.

The current round of RWP “updates” has required the ISC to resurrect the remnants, or otherwise grow a new crop, of regional entities to achieve the requisite level of stakeholder “participation” needed to validate changes to the plans that will produce enough consistency to enable the regional plans to be integrated into a new State Water Plan. Serious questions have

been raised by RWP participants about both the content of the updated plans and the process being used to do the updates.¹

RWP stands largely decoupled from the actual processes of governing New Mexico's water resources, as documented elsewhere.² Moreover, the fragmented nature of regulatory authority over water makes planning and policy coordination as difficult as it is necessary, as pointed out in another paper in this series.³ In these circumstances, it is not difficult to understand how commitment to participate in the RWP process would easily wane. "One-shot" or ad hoc attempts to achieve public "input" to a plan document that no one "owns" or has responsibility to implement are prone to failure. The benefits of participation are elusive, while the costs – in time, energy, and opportunities forgone, may be substantial.

An Alternative Approach: Planning as a Tool of Governance

Given the situation depicted above, do we really need regional water planning? Its principal intended output at this point seems to be to ratify a list of projects to be proposed for funding by the various water management and provider agencies within the region. Though not necessarily an insubstantial role, its value depends on the degree to which a multi-stakeholder planning process actually informs the decisions in setting regional priorities. Net benefits to be derived from continuing participation by stakeholder groups are the basis of motivation for public engagement in water planning in the first place.

If Regional Water Planning is to be of benefit, it must be in the context of providing a set of tools for better water governance at a regional scale. Water planning at the regional level must be done in closer synch with the agencies and actors that exercise their authority to open and close the valves. Paying attention to the design of the institutional arrangements for making that happen is important to its future success.

We describe below and recommend establishing in each region a new kind of permanent entity that might be called a "regional water planning coordination and policy review advisory board." It would be recognized in statute (unlike the current ad hoc steering committees) but would not displace existing authorities. Such a body in each region could do much to improve water governance. This will require the State (ISC officials) to be willing to relinquish some of the control it exerts over the RWP process, and to focus some of its efforts instead on strengthening institutions of local government and civil society. In this regard the concept of *polycentricity* may be helpful for understanding how our water resources might be governed more sustainably and equitably. "Governance does not require a single center of power, and governments should not claim an exclusive responsibility for resolving political issues. Instead, we should think of

¹ See Lucy Moore's report on the July 28 Sevilleta workshop at <http://nmwaterdialogue.org/new-mexico-water-dialogue/library/water-governance>.

² See Brown, J.R. 2015. "Governance: The Missing Piece Required for Successful Water Planning in New Mexico" at <http://nmwaterdialogue.org/new-mexico-water-dialogue/library/water-governance> [Unpublished MS].

³ "Weak or Broken Linkages, and Strategies to Strengthen Them."

politics as an activity that goes on in many arenas simultaneously, at many scales of aggregation.”⁴

New Mexico needs to govern its water resources in a way that takes account of what markets would ignore as “externalities,” including the loss of ecosystem services and other costs we all bear as a society, now or passed on to future generations. Governing this way will require a more robust set of institutional arrangements than those that currently exist. It will involve greater decentralization and sharing of responsibilities, among a more broadly representative set of stakeholder interests, in ways that promote collective learning, cooperation, coordination, and partnerships between and among governmental entities and members of civil society at many levels. These include agencies responsible for providing water (federal, tribal, state, and sub-state quasi-governmental and private), regulatory agencies, and the full range of “appropriators” (users, including water right holders with diverse priority dates, paying customers in every economic sector, and advocates for particular public or group interests, including non-consumptive uses). All are stakeholders, and depending on the issue at hand, may need to be “at the table.”

The designation “long-term regional water planning and management groups” fails to capture this concept fully. Several questions arise. The first relates to scale. John Fleck asks “What is the proper scale for water governance, and therefore what is the proper scale for water planning?” He answers to the effect that there is no single appropriate scale for either. The concept of *polycentricity* suggests that successful governance of scarce shared resources needs to operate “in a nested fashion, at a bunch of different scales,” and that “[o]nce you have the governance piece down, then you can do planning to help deal with a specific set of problems operating at a specific scale or scales.”⁵

Fleck also notes that planning “will in some sense always be at the wrong scale.” But what about planning that takes place within an agency to deal with issues at a scale (geographical and jurisdictional) it sees as most relevant to its needs? An individual water provider agency’s or organization’s planning may often be undertaken in a “silo”; that is, without taking much account of the concerns or values held by residents of adjacent or overlapping jurisdictions, or of the relationships of an agency’s policy choices to others’ plans and priorities, including land use policies and decisions.⁶

To the extent this non-cooperative approach to governance engenders conflicts and inefficiencies, it suggests the desirability of developing institutional arrangements to provide important jurisdictional “boundary-spanning” functions at a regional (as in “water-planning

⁴ “Polycentric governance” is not anarchy. It suggests a way of understanding interactions among institutional actors that goes beyond conventional categories of “jurisdiction” and boundaries of legal authority. Michael McGinnis, Ed. 1999. *Polycentric Governance and Development: Readings from the Workshop in Political Theory and Policy Analysis*. (From the Series Foreword, xii.)

⁵ John Fleck, personal communication (August 9, 2015).

⁶ Regulatory authorities may also fail to appreciate fully the effects of decisions that, while focused on a single agency, may have broader consequences within a region. So, too, might user groups, in isolation, miss opportunities to advance mutual interests by misunderstanding the larger context of a problematic situation.

region”) level. How should such arrangements be designed? Elinor Ostrom’s work positing a set of “design principles” that characterize successful institutions for community-based management of common-pool resources (CPRs) provides a useful list of elements for consideration.⁷ Some of them may be more relevant to RWP than others, since governance activities at a regional scale necessarily involve a broader spectrum of actors. The list is at Table 1. Next to each of the design criteria are one or more questions whose eventual answers may help shape the institutional arrangements that each region may craft.⁸

For instance, the question of geographic boundaries seems a likely starting point for consideration. While the RWP recognizes 16 water-planning regions corresponding to political jurisdictions, the 2003 State Water Plan analyzes water resource issues on the basis of hydrologic basins. Whether this discrepancy is significant depends on the purposes the regional groups are intended to serve. Overlapping boundaries, however, increase the importance of effective communication and coordination of governance actions. In any case current regional boundaries ought to be subject to adjustment to better reflect “political and hydrologic” realities and interests.

Planning coordination, including review of possible conflicts (as well as complementarities) among proposed plans and actions, and their implications for long-term sustainability, would be likely to be an important aspect of such an entity’s work. Such entities might be called “regional water planning coordination and policy review advisory boards.” Following are some preliminary suggestions about the authority, structure, and functions of a regional advisory board.

Authority

1. It should be authorized by State law, with a general legislative mandate such as “to engage water providers, regulators, and users in every region in the state in productive dialogue about their water future, and promote cooperative and coordinated action, informed by sound science, to respond and adapt to shocks to the social and ecological systems on which they depend....”
2. It should not be a creature of the Interstate Stream Commission; however, it is necessary that the ISC recognize its legitimacy.
3. It would focus on policy planning and review, maintaining ongoing oversight of activities of member entities and external actors affecting the water resources available to the region.
4. It should seek to develop internally, or have the authority and resources to initiate on its own, scientific and technical inquiries into the feasibility and potential impacts of proposed policies, programs and projects.

⁷ Adapted from Cox, M.E. *et al.* 2010. A review of design principles for community-based natural resources management. *Ecology and Society* 15(4) 38. Selected are what seem to be the most relevant attributes from Ostrom’s original list as modified by Cox *et al.* based on their empirical review of the robustness of these elements. For the original design principles see Ostrom, E. 1990. *Governing the Commons*. Oxford.

⁸ The third column in Table 1 is adapted from a set of discussion questions posed in a paper prepared by the State of Oregon’s Water Resources Department Place-Based Integrated Water Resources Planning, 2014, http://www.oregon.gov/owrd/LAW/docs/IWRS/2014_03_10_IWRS_Place_Based_Discussion_Paper_Final.pdf.

Structure

5. How membership categories should be determined, and at what level, is important, given that each region has a different mix of water uses, providers, federal and state agency involvement, etc. Should certain member types be mandated, or should “broad-based” membership be required but not be closely specified (cf. Colorado’s Basin Roundtables as an example)?
6. Should all water providers, appropriators, and regulators be represented, and should federal and state representatives participate at a level congruent with their agencies’ regional concerns?

Functions

7. A regional advisory board could facilitate the planning processes of water providers within the region by acting as a mechanism for seeking and gathering public input for decision-making.
8. It could be the locus for defining (and redefining, on an ongoing basis) what constitutes the “public welfare” (including building the adaptive capacity) of the region, and for testing agencies’ plans, policies and projects against public welfare criteria.
9. It could assemble, analyze and disseminate information regarding the environmental implications of natural processes and human actions for the region.
10. If properly resourced, it could initiate studies, carry out on-site inspections, hold hearings, monitor progress and provide a forum for developing a regional political consensus around water policy issues.
11. A regional advisory board may see value in developing a policy-level “integrated regional water management” plan for the region that would provide guidance and context for the operational plans and activities of water-related agencies. The planning process could also be a means for assuring that land-use, transportation and other plans are made with full awareness of the bio-physical realities of a region’s changing water situation and the values of the region’s inhabitants regarding its uses and protection.

Is the development of such regional advisory bodies needed, and is it politically feasible? The answer to the first part may differ from region to region. Not all the western states with state or regional water planning have adopted regional boundaries that cover the entire state. For instance, California’s Integrated Regional Water Management Act of 2002 was passed to encourage local agencies to work cooperatively, in order to manage local and imported water supplies, improving their quality, quantity, and reliability. The California Department of Water Resources has provided competitive planning grants to most of the forty-eight locally-formed Regional Water Management Groups, and as of 2014, thirty-seven IRWM plans had been adopted by the RWMGs.⁹

The question of feasibility is also complicated. Some roles for regional entities are likely to gain easier acceptance than others, both in the Legislature and by the OSE/ISC. But the issues posed are not new. An attempt to address them was made in 2003, concurrent with the development of

⁹ Similarly, the Washington Legislature felt that local development of watershed plans for managing water resources and protecting existing water rights was vital. The law provides a process to allow citizens in a watershed to join together to assess the status of the water resources in their watershed and determine how best to manage them. These examples are cited in Oregon’s Place-Based Integrated Water Resources Planning, 2014. See note 8, *supra*.

the State Water Plan. ISC staff convened an “ad hoc committee” of regional water planners to recommend a policy regarding the relationship between the ISC and the RWPs, the core of which was that the SWP should “integrate regional water plans except where there are overriding state interests. Where there are interests that affect both the state and a regional water plan(s) [*sic*], then the matter will be resolved via a collaborative effort.” Overriding State interests were matters where state agencies have “statutory authority and responsibility,” requiring “policies that guide both the State and the Regions.” The draft report continues: “To accommodate and protect the diversity of New Mexico some planning activities must be addressed at the regional level.” Those activities included water banks, conservation programs, and notably, *public welfare*.¹⁰

If this report had been adopted as an operating policy, that statement would be significant as recognition that regions have the authority to say what constitutes “public welfare” within their territory, which the State Engineer must take into account in his determinations.¹¹

These recommendations do not ask the State to cede its authority to regulate, but allow the region to plan for its water future, engage the public, implement the recommendations and monitor progress. Local knowledge and value perspectives, backed with the best scientific information available, can help New Mexico become more resilient -- more responsive to changing needs and circumstances. Constituting the regional advisory boards to play these important roles is an exercise in the design of institutional arrangements to which all stakeholders should find good reasons to contribute.

¹⁰ The draft report of the ad hoc committee can be found in the New Mexico State Water Plan 2003. Appendix C.

¹¹ A third category of issues identified by the ad hoc committee are several that involve both State and regional concerns. “Differences that arise between regions, or between regions and the state[,] require procedures and criteria [for resolving them] developed in a collaborative effort between regions and appropriate state agencies.” The State has not initiated such an effort pursuant to the SWP during the decade since. (The New Mexico Water Dialogue attempted to address some of the inter-regional conflict questions in its “Upstream-Downstream” project, between 2006 and 2008.) The ad hoc committee was renamed in 2007 “The State Water Plan – Regional Water Plans Advisory Council (RWPAC).” Its last meeting was held in May 2010.

Table 1: Design principles and questions

Name of criterion	Functional Design Questions	Related Oregon Questions
(see note 7)		(see note 8)
User boundaries	Are rights and responsibilities of different categories of appropriators clearly delineated?	Q2. How prescriptive should State be with regard to composition of groups?
Resource boundaries	What are the region's geographical boundaries? What's an appropriate "regional" issue?	Q2. How prescriptive should State be with regard to borders? Should regions be state-defined (e.g., TX and WA) or should the state allow self-selection, e.g. California?
Congruence w/ local conditions	Are regional appropriation and provision rules (operational, within nested system) congruent with local social and environmental conditions?	
Appropriation and provision	Are benefits to users (appropriation rules) congruent with inputs required from users (provision rules)?	
Collective-choice arrangements	Can individuals and user groups affected by operational rules participate in changing them? What decision authority exists (advisory, recommending, veto, etc.)?	Q3. Governance structures: agreements; decision rules; leadership and agenda-setting roles? Q4. Stakeholder/public roles: assignment v. flexibility of membership; inclusion of neighboring entities; communication mechanisms
Monitoring actors' behavior	Do monitors accountable to beneficiaries (users?) monitor the appropriation and provision levels of actors?	
Monitoring the resource	Do monitors accountable to beneficiaries (users?) monitor the condition of the resource? Is there a trusted objective fact-finding resource (technical group) to assist?	
Graduated sanctions	Are appropriators who violate operational rules likely to be assessed graduated sanctions by other appropriators or by officials accountable to them?	
Conflict resolution mechanisms	Do operational rules include internal mechanism for conflict resolution or access to low-cost arena to resolve conflicts among appropriators or between appropriators and officials?	
Recognition of right to organize	Is the right of regional actors to devise their own institutions acknowledged by external governmental authorities?	

Name of criterion	Functional Design Questions	Related Oregon Questions
Nested enterprises	Are the governance activities of regional entities organized within a framework of nested enterprises?	Q.8 Integration: Other Planning Efforts in Oregon have separate institutional structures, requirements, and funding sources. How best to collaborate and coordinate with these efforts most efficiently?
<i>Other issues not addressed as design criteria</i>	What resources are available to support governance / planning process?	Q.5 Data management/plan outline: mandatory/optional elements to sync with IWRS issues? Q.6-7 Addressing instream and WQ needs: if regions to address, what technical resources should they get?
		Q.9-12 Plan adoption: by whom, sequence; process/criteria for state review; role of state agencies other than WRD at state and sub-state levels in process; funding for projects in relation to plans