**Governance: The Missing Piece Required for Successful Regional Water Planning in New Mexico**

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*This is where governance becomes important. [A] region …will succeed or fail depending on the adaptive capacity provided by its water governance structure to move water around, share surplus and shortage, and create the needed equity among the [suppliers] and water users of a heterogeneous community.*[[1]](#footnote-1)

**Abstract**

This paper argues that the crucial missing piece that has rendered regional water planning (RWP) less than optimally effective in New Mexico has been the lack of attention by either the State or regional constituents to creating multi-level institutional arrangements for governing the water resource. The “regional water planning entities” are ephemeral.  Some simply disbanded or faded away after their plans were accepted by the ISC. Though revived or reconstituted for a second round of “updating” the plans initiated in 2014, their ongoing relevance remains questionable.[[2]](#footnote-2)

**Introduction**

The original motivation for water planning in New Mexico is generally acknowledged to have been to keep El Paso from pumping NM groundwater by demonstrating our state’s need for that water. The Legislature responded in 1987 by authorizing a regional water planning program on the theory that “the state’s future water needs can best be met by allowing each region…to plan for its water future.” Water-planning regions were to be self-defined and organized, having “sufficient hydrological and political interests in common to make water planning feasible.”

As perceived by State Engineer (SE) Steve Reynolds, the problem was whether New Mexico could protect its groundwater from appropriation by out-of-state interests. It seems that the “regional” part stemmed from a need to identify relatively quickly as many good reasons as possible why NM needed to keep that water in the state. Allowing regions to plan for their own water future minimized the potential for conflict among heterogeneous intra-state interests, which trying to do “planning” at a statewide scale would have exacerbated. At any rate, scant attention was paid to institutional design of the regional “entities.”[[3]](#footnote-3)

Even so, concern for regional diversity and acknowledgement of the regions’ heterogeneity were important elements of the first iteration of the planning process. The principal goal of the exercise was to bring into balance *within each region* the demand for water with the available supply. The legislature had added “public welfare” to the criteria the State Engineer must use in deciding whether to approve water right transfers; water planners in the regions interpreted this test as applying to the regions themselves. Statements defining Public Welfare became important parts of some regional water plans, together with the expectation that the SE would take them into account in making his determinations.

**Stage One: Region-Centered Regional Water Planning**

The Legislature had authorized the Interstate Stream Commission to oversee the RWP process and to make grants to “the regions” to hire technical experts as needed. But regional capacities and understanding varied widely, and in 1992 a planning subcommittee of the ISC and a volunteer work group composed of 14 individuals representing water-related interests throughout the state (who were to become the nucleus of the NM Water Dialogue) was created to sort out the confusion and produce a “Regional Water Planning (RWP) Handbook” (1994, often referred to as “the Template”). The Handbook placed emphasis on substantial public involvement and on developing alternatives and strategies to address regional shortfalls with regionally-negotiated solutions, while acknowledging the “challenge of attempting democracy” (p. 2) in a complex institutional environment.

Against this regionalizing (one might say *decentralizing* and *democratizing*) tendency, long-standing and deeply entrenched authorities and relationships of control and allocation were (and are) at work in the opposite direction. The State Engineer (SE) exercises statutory authority to supervise the measurement, appropriation and distribution of the state's water, including considering the public welfare of the state. Regional definitions of public welfare, and plan strategies based on them, could not be allowed to interfere with the SE’s power. This set up a growing tension between the State’s need to exercise control, and the impulse among at least some regional water planning groups to insist that the resulting RWPs be seriously implemented.[[4]](#footnote-4)

The regional water planning process has been important as a vehicle for bringing water providers and diverse users together and to narrow the gaps between them in understanding the condition of the water resource, the demands being placed on it, and the implications of those facts for the future. But the RWPs themselves contain no enforceable mandates, assignment of responsibility, or monitoring procedures to ensure they are carried out, or to measure their success. In short, the process and resulting plans lack “teeth.”

The “defanging” of the RWPs and the entities responsible for creating them has been accomplished partly through the criteria and process by which the ISC “accepts” (the term chosen instead of “adopt”) the RWPs (link [here](http://www.ose.state.nm.us/Planning/criteria.php)). More important, however, has been the ISC’s increasing ambivalence regarding supporting an ongoing role for the ad hoc water planning groups *that it created for purposes of regional planning*. Some of these groups endeavored to become or to establish instruments for monitoring the plans’ implementation and success in carrying out the policies the ISC accepted.[[5]](#footnote-5)

**Stage Two: State Water Planning**

Around the time much regional water planning activity was at its height (2000-2003), the State of New Mexico began to reconsider whether regional level planning was the best strategy available for achieving control of the state’s water resources. Other states in the intermountain West, as well as California, were developing statewide plans. Despite the Template’s guidance, New Mexico’s regional water plans, often using locally developed data, were deemed inconsistent and difficult to aggregate at the state level. Moreover, some plans articulated more ambitious policy goals than the SE and ISC were comfortable supporting (such as tying land use approval decisions to applicants’ identifying and securing a sustainable water supply).

In 2003, an aspirational State Water Plan (SWP) was rushed to completion during Gov. Richardson’s “Year of Water.” Its stated aim was to provide a “clear vision and policy direction for the management of the state’s waters.” But this policy direction was developed largely independent of the RWPs, only six of which had been completed and accepted by the ISC at that point. The SWP, in fact, largely ignored the water planning regions (except as noted below) in favor of analyzing the state’s water resource issues (quite logically) around hydrological basins.

Because the focus of this paper is regional water planning, rather than the content or process of developing the 2003 State Water Plan, just a few examples will be cited here as evidence of the changing relationship between the OSE/ISC and the regional water planning entities during this period. More importantly, these examples also document the State’s evolving understanding of the scope and purposes of regional water plans.

1. The RWPs-SWP Ad Hoc Committee[[6]](#footnote-6)

Concurrent with the development of the state water plan, ISC planning staff convened several meetings of an “ad hoc committee” composed of regional water planners, to “recommend a policy regarding the relationship between the [SWP and the RWPs]” (SWP 2003 Appendix C). The core of its recommendations was that “the [SWP] 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), then the matter will be resolved via a collaborative effort.” Overriding State interests were identified as those matters where “the ISC, OSE, and the Water Trust Board (WTB) have statutory authority and responsibility... which require policies that guide both the State and the Regions.” A listing of those areas of State responsibility was included.

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*. 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. But in practice, the “regions” (i.e., the regional water planning entities) have no statutory authority, and their plans lack the force of law or even of regulation.

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.)

1. The Water Project Finance Act and Water Trust Board (WTB) project funding

A water project fund was created by the legislature in 2001, with the WTB as administrator of that fund. It has become important over time as the principal vehicle for financing water infrastructure and other projects, and has served to alter the character and focus of the Regional Water Plans.

Pursuant to the law and rules first adopted in 2003, the WTB is required to give priority to “[p]rojects that have been identified by a regional water plan that has been accepted by the Interstate Stream Commission…” [WTB Project Management Policies. 2013. Section 1.3]. This has had the effect of *raising* the visibility of regional water plans as necessary in attempts to secure project funding, while *decreasing* the plans’ significance as a means for providing guidance for the overall governance of the water resource.

1. Active Water Resource Management (AWRM)

The AWRM initiative of the OSE, initiated in 2004 in response to continuing drought, provides an illustration as well as additional evidence of the diminishing significance of regional water planning as a comprehensive program. AWRM is a set of tools (rules and procedures) by which the SE can “supervis[e] the physical distribution of water, to prevent waste, and to administer the available supply of water by priority date or by alternative administration, as appropriate” [19.25.13.2 NMAC - N, 12/30/2004].

As with the SWP itself, AWRM is organized around hydrological units (basins, sub-basins, etc.) without reference to political jurisdictions. This seems a perfectly reasonable way to proceed for short-term reallocations of water resulting from shortage sharing agreements. However, taking such steps would be likely to have significant effects on regional water plans and planning. Yet neither is even mentioned in the AWRM framework regulations.

**Stage Three: State-Centered Regional Water Planning**

After several years of inadequate and inconsistent funding (perhaps reflecting its ambivalence about the program), the legislature appropriated $400 thousand to the ISC for water planning in FY 2014, an amount matched by an NM Finance Authority grant. In June 2013 the New Mexico Interstate Stream Commission approved a staff work plan using these new resources. Its first task was to “coordinat[e] completion of the State Water Plan Update,” noting that the 2003 SWP law requires the OSE and ISC to review that plan every five years and to update it as needed.

The staff work plan’s second task was to update the regional water planning guidelines (the 1994 RWP Handbook) “to provide for consistency and accountability” in updating the plans. (By this point the ISC’s planning staff had been reduced to one position.) Representatives of the Dialogue, the MRG Water Assembly, and others encouraged the ISC to involve the regions in revising the Handbook. The Commission, however, took a different tack, appointing a small internal “planning committee” which met with staff and produced a draft “Updated RWP Handbook,” shown to the public in September.

The preliminary draft of the ISC’s “Updated Regional Water Planning Handbook: Guidelines to Preparing Regional Water Plans in New Mexico” **[**September 3] stated: “The purpose of the regional water plan updates is to *identify important water projects* that have been implemented since the plan was published and *to identify new projects* that will implement the objectives of the regional water plan and are consistent with the alternatives identified in the accepted plan. The update should identify additional categories of alternatives, if applicable, and identify *specific new projects that will be submitted for funding to state and federal funding programs within the next 5 years*” (18, emphasis added). In short, the principal output of the regional water planning update process was to be a list of fundable projects.

Following critical comments from the regions on the draft guidance, that section was broadened to read, in part: “The purpose of the regional water plan updates is to calculate the gap between supply and projected demand and to identify strategies (*projects, programs, and policies*) that address that gap and other water management issues identified by the regions” [2013 (December). Updated Regional Water Planning Handbook: Guidelines to Preparing Regional Water Plans in New Mexico. 17].

From the viewpoint of a substantial number of regional water planners, both the draft and final versions of the guidance are problematic in terms of both content and process. In order to achieve the “consistency” needed to enable the regional plans to fit neatly into an updated State Water Plan, the ISC has prescribed a “common technical platform” (CTP) that it defines as “a simple methodology that can be used consistently across all regions to assess supply and demand for planning purposes.” Based on 2010 “water use by category” data, the CTP purports to provide a baseline overview of supply and demand adequate to allow the ISC to assign to each region a value for its “administrative water supply,” a novel, conceptual category of water that considers only “legal” withdrawals for human beneficial uses, while ignoring net depletions and such variables as open water evaporation and riparian evapotranspiration.

Beyond its perceived technical inadequacies, regional actors have raised questions about the process being used to update the plans, to the extent that it seems questionable whether “update” is an apt characterization of what is being done. Major sections of the plans are being developed and written by consultants to the State, and regional steering committees are expected to use these data in developing strategies (defined as “projects, programs, and policies”) that will address the anticipated gap between supply and projected demand. These “strategies” are presumed to require funding to implement, so the update guidance asks that they be “grouped by the funding categories identified in the Water Trust Board application.”

Regional water planning thus appears to have become little more than an elaborate ritual for producing lists of projects! But it could do so much more to help water providers, regulators, and users in every region of the state become engaged in ongoing conversations about their water future. In the face of serious issues of supply, demand, and allocative justice raised by impacts of climate change, they need to be able to act cooperatively, informed by the best science, to help the natural and social systems they depend on become more resilient, or to adapt to new ecological regimes. The top-down process prescribed, directed, and largely conducted by the ISC for updating regional water plans does little to advance that conversation, to facilitate learning, or to build adaptive capacity.

**Conclusion: What Can Be Done Now?**

The NM ISC (and perhaps the state legislature as well) has quite low and limited expectations for regional water planning. It may be possible, over time, to change these expectations, but the evolution of collective choice at the regional level to promote cooperative and coordinated action in response to system shocks will require the State to be willing to relinquish some of the control it exerts over the planning process and its outcomes. The Utton Transboundary Resource Center at the UNM School of Law has posed the question this way: is long-range planning a “*process* for including the public in continued discussion about decisions or an *end product* outlining projects and policies for the future (*Water Matters!* [2013 rev.] 7–6)?” If the answer is *process*, the Utton Center article suggests a model:

Colorado… has set up a framework for continuing broad-based discussions of water issues. There, the planning function is a continuing process that is used as a mechanism for public input on decisions. There are basin roundtables established for each of the state’s nine major river basins and a “metro roundtable” for the Denver metropolitan area. These basin roundtables facilitate discussions on water issues and encourage locally driven, collaborative solutions. Membership is broad-based but is statutorily defined. The roundtables are each responsible for developing a basin-wide needs assessment using groundwork completed during a statewide water supply study.

Colorado provides continued funding for the roundtables, further reflecting Colorado’s view that planning is an important ongoing process, which provides direction for decision-making. If Colorado’s system were applied to New Mexico, it is possible to envision that basin groups, such as roundtables or regional planning committees, might provide input on public concerns to the OSE/ISC on projects, policy development and water transfers and applications (ibid. 7–7).

Despite its self-imposed shortcomings, New Mexico’s RWP update process is currently the only means available to influence statewide water governance. By bringing together diverse members of the water-aware public, local officials, and the ISC, it offers an opportunity to rethink the purposes and means for long-range planning. It can foster the development of new institutional arrangements that, as in Colorado, “encourage locally driven, collaborative solutions” to regional problems.

1. John Fleck, blog post [jfleck at inkstain] 2015.07.21 “[Coachella groundwater management: it’s complicated](http://www.inkstain.net/fleck/2015/07/coachella-groundwater-management-its-complicated/).” (Wrenched shamelessly out of its original context by JRB). [↑](#footnote-ref-1)
2. The Middle Rio Grande Water Assembly is one exception, having become a 501(c)(3) non-profit organization with bylaws and a sort of (weak) representative structure. But this has not resulted in giving the organization actual legitimacy (voice, influence) in arenas where water decisions are made.

 [↑](#footnote-ref-2)
3. Though it may have seemed to idealistic regional planners an effort on the State’s part to engage in participatory democracy, the impetus for regional planning is likely to have owed more to Machiavelli than to Habermas. [↑](#footnote-ref-3)
4. In the Middle Rio Grande (MRG) Region, for instance, the Plan’s goals and selected strategies (with some exceptions) were felt to be widely ignored or paid only lip service by water managers within the region and by state officials. This is not to deny that individual water providers have undertaken to implement some policies (e.g., the ABCWUA’s “San Juan-Chama Project” and its successful conservation program) that are more or less consistent with the goals of the RWP. [↑](#footnote-ref-4)
5. For example, the Water Assembly led the public regional water planning process for Sandoval, Bernalillo and Valencia Counties. Since the Regional Water Plan’s acceptance by all local governments in the region and New Mexico’s Interstate Stream Commission in 2004, the Assembly has been sponsoring conferences and informational forums as well as other activities to encourage public awareness and implementation of the Plan. Yet it has increasingly been portrayed as simply an advocacy group, its institutional history, capabilities and contributions to the current RWP largely ignored.

The Taos region (Taos County) was the last to complete its regional plan (in 2008). The planning committee developed specific criteria for defining public welfare and a process for establishing a public welfare review board. The ISC refused to accept the plan after considerable controversy arose regarding the review board. The acceptance issue was resolved when the Taos County Commission adopted a Public Welfare ordinance, creating an advisory committee to evaluate and make recommendations to the Commission on whether proposed water right transfers are in the public interest of the County. [↑](#footnote-ref-5)
6. 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. [↑](#footnote-ref-6)