DISPUTE RESOLUTION PROCESSES

Thinking through SGMA Implementation: A Water in the West Series

Key Findings & Recommendations

In 2014, California passed the Sustainable Groundwater Management Act (SGMA) requiring the formation of Groundwater Sustainability Agencies (GSAs). These agencies must develop and implement Groundwater Sustainability Plans (GSPs, Plan) to achieve sustainability at the basin-scale within 20 years of Plan implementation. In many basins, this will require multiple GSAs working together to achieve sustainability.

Jointly, GSAs will have to make many challenging and potentially contentious decisions. Having dispute resolution clauses in coordination agreements as required under the California Code of Regulations Title 23 § 375.4(b)(2) may help GSAs prevent and navigate conflicts proactively. However, to be effective, dispute resolution clauses should be tailored to the specific governance structures, goals and groundwater conditions in each groundwater basin. This research assesses the agreements of 74 multi-entity GSAs formed as Joint Powers Authorities (JPA) or through Memorandums of Understanding (MOU), along with semi-structured interviews and email correspondence, to answer the following research questions: (1) Who is included in the GSA decision-making body and how are decisions amongst them made? (2) To what extent do the agreements include a clause related to dispute resolution and what is the range of procedures that these clauses address? (3) What can be learned from the experience of other, non-SGMA water management agencies and from the environmental conflict resolution literature regarding how dispute resolution clauses have been invoked or ignored in practice?

Our review of the agreements of the multi-entity GSAs found that:

- Most agreements contain dispute resolution clauses; however, roughly one-third of them do not.
- There is no difference between JPA and MOU agreements in terms of the likelihood of having or not having dispute resolution clauses.
- The contents and complexity of the dispute resolution clauses present in the agreements differ substantially across cases.
- There are multiple reasons why multi-entity GSAs have or have not included dispute resolution clauses in their agreements. Dispute resolution clauses can help to calm parties when agreements are being formed between potentially contentious parties. However, in such cases it can be difficult for parties to reach an agreement about the content of such a clause, particularly under tight timelines.
- In other, non-SGMA JPAs in California, even the presence of dispute resolution clauses has not necessarily resulted in their use.

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While there may not be a single set of recommendations at the GSA-scale that would fit all cases, we propose the following recommendations for GSAs and the State agencies supporting them.

1. **GSAs should consider devoting time and resources to developing local-level dispute resolution processes.** Given the likelihood that disagreements among implementing agencies at the local level will occur across the high- and medium-priority basins where SGMA is being implemented, local agencies should consider an investment in dispute resolution capacity as a form of insurance. Devoting a modest amount of resources to developing dispute resolution processes will ensure these systems are available when the need arises.
2. **The State should consider developing State-sponsored programs to support alternative dispute resolution.** The State could make the dispute resolution process more efficient through a form of "risk pooling," i.e., making dispute resolution resources available to the GSAs through a statewide program. This program could take the form of retaining a panel of Alternative Dispute Resolution (ADR) practitioners who agree to: (a) become familiar with SGMA and with groundwater management issues; and (b) serve when needed to mediate and/or arbitrate disputes within or between GSAs. The State Water Resources Control Board has contracts in place to provide mediators and facilitators to resolve disputes and help the parties work together effectively. However, the State should consider expanding this program to make it more accessible, both in terms of resources, as well as education of users and training of neutrals on mediation of groundwater conflicts.
3. **The State should consider working with existing alternative dispute resolution programs to develop messaging around the value of mediation.** The U.S. Department of Agriculture and other programs currently provide funding to help growers and others avoid the long and expensive process of litigation. Working with these agencies may provide the data and tools necessary to ascribe economic values to ADR.
4. **Courts throughout California should be encouraged to redirect any complaint filings involving GSAs to ADR.** Doing so will facilitate use of dispute resolution processes in good faith.

For more on this research, please see the full report: Moran, T., J. Martinez and W. Blomquist. (2019). Dispute Resolution Processes. Thinking through SGMA Implementation: A Water in the West Series. Stanford Digital Repository. Available at: *https://purl.stanford.edu/kh912mb9452*.

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