

An aerial photograph showing a winding river or canal system cutting through a landscape of green and brown agricultural fields. The water is a deep blue, and the surrounding land is a mix of vibrant green and dark brown, suggesting different types of crops or soil. The river winds in a series of loops and curves, creating a complex network of waterways.

# Dispute Resolution Clauses in Interorganizational Coordination Agreements: A Comparative Analysis

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Interorganizational relationships (IORs) are essential but susceptible to conflict. Proactive management of conflict and disputes can reduce costs and increase IOR efficiency. Despite these benefits, dispute resolution clauses are not ubiquitous in IORs. This research investigates the factors that may affect the inclusion and specificity of dispute resolution clauses in interorganizational agreements, and whether the participants in IORs regard dispute resolution provisions as an important element when they institutionalize IORs through the adoption of interorganizational coordination agreements.

To pursue these questions, we examined 74 interorganizational agreements which were particularly appropriate for comparison because they all have the same origin and occurred at the same time. They are interorganizational agreements establishing new local agencies under the statutory framework of California's Sustainable Groundwater Management Act (SGMA). SGMA requires the creation of Groundwater Sustainability Agencies (GSAs), and authorizes local governments either to form GSAs separately or join with other local governments in the same groundwater basin to form one. Where GSAs were formed as intergovernmental bodies, the participating governments must engage in considerable coordination of effort. SGMA requires GSAs to develop 20-year Groundwater Sustainability Plans for state review and approval, implement those plans with extensive monitoring and reporting requirements

to determine progress in achieving a sustainable groundwater supply, and adjust plans and actions as needed. Given the high stakes and history of conflict over water resource management in California, and the substantial coordination requirements associated with SGMA implementation, there is significant ex ante potential for interorganizational disputes to arise within these joint GSAs. The dataset of their 74 interorganizational coordination agreements therefore presents a distinctive and perhaps unique opportunity to assess whether the participants perceived preparations for dispute resolution as a salient matter and whether they incorporated such preparations into their agreements through dispute resolution clauses.

First, we examined the 74 interorganizational agreements establishing joint GSAs to determine whether there were any patterns to (a) their inclusion or omission of dispute resolution clauses, and (b) the specificity of those clauses when they were included. We considered several possible factors, based on the existing literature on interorganizational conflict and cooperation. Among others, these potential explanatory variables included the number of agencies involved in the agreement, various measures of the diversity of participating agencies, agency capacity measures, physical conditions of the basin, and whether the agencies participating in an agreement had engaged the services of facilitators during the agreement development process.



Only agency annual budget and the use of facilitation services were statistically significant factors in predicting the inclusion of DRCs in the agreements. These findings suggest that better resourced agencies (both financially and with improved access to expertise) are more likely to include DRCs in their agreements. Based on these results, one could hypothesize two potential factors affecting the inclusion of DRCs in well-resourced agreements: 1) the agencies perceive a higher risk and potential loss resulting from conflict and therefore seek to mitigate it, or 2) access to more resources increases the likelihood that lawyers, facilitators or others involved in drafting the agreement are familiar with DRCs and their potential benefit in complex IORs.

To garner insight into these and other potential factors influencing the inclusion and specificity of DRCs in the agreements, we conducted interviews of key participants who were involved during the development of the interorganizational agreements. Interviews were conducted with a subset of GSAs representing a diversity of regions, sizes and water resources conditions. The interviews provided us an opportunity to inquire about the perceived salience of dispute resolution during the agreement development process, how dispute resolution clauses had been added to the agreements where they appear, or why they had been omitted in agreements where absent. There was a near uniform lack of salience associated with the inclusion of dispute resolution clauses, let alone with their content or specificity. In the cases where dispute resolution clauses had been included in the agreements, interviewees did not recall much or any discussion of the language of the clause or even of whether to have it in the agreement. In most cases the language appeared to have been copied or adapted from other previous agreements to which one or more of the

participating agencies had been parties in the past. These results suggest that lawyers or facilitators, rather than agencies themselves, are the primary driver for including DRCs in IORs. In the cases where dispute resolution clauses were not included, interviewees did not recall the option being considered.

Our research thus presents a puzzle. On one hand, experts consider dispute resolution provisions to be an important component of multi-entity agreements. On the other hand, even in a setting with a high likelihood of interorganizational conflict emerging, the inclusion of dispute resolution clauses and their specificity appeared nearly haphazard, often driven by the particular inclinations or experience of the agreement drafters with minimal involvement of the other participants to the agreement itself. It clearly cannot be taken for granted that dispute resolution provisions will be adopted when interorganizational coordination agreements are composed and established, nor do their inclusion or contents appear to draw much attention from the agreement signatories. There remains considerable room for further education and advocacy regarding the importance of providing for conflict and its resolution as an element of interorganizational coordination, and somewhat worrisome risk that in the absence of such provisions an unnecessarily large number of interorganizational disputes will end up in litigation.

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