Tribal nations are locked inside the U.S. water regime

Phoebe Suina on the Rio Grande River, Pueblo inclusion and the need for holistic solutions to our man-made disaster.

Kalen Goodluck | Jan. 31, 2022 | From the print edition

New Mexico’s water-management agencies are having trouble keeping their rivers wet, and the problem will only get worse, according to a 50-year climate change and water study that was completed last year. So the agencies have begun planning for a future of dwindling water supplies in the San Juan and Rio Grande basins. For tribal nations, the big question is: Will they finally have input in water management decisions?

Under Western water law’s “first in time, first in right” doctrine, sovereign tribal and pueblo nations are entitled to the most senior rights on the region’s waterways. Yet the U.S. water regime has long locked tribal nations out of the federal, state and local water-planning and decision-making process. Over the past century and a half, federal, state and local agencies have dominated planning on New Mexico’s largest river, the Rio Grande, fracturing it with man-made reservoirs and diverting it to irrigate farms and lawns and golf courses. They have over-allocated it to such an extent that they now must import water from neighboring basins just to keep the river flowing.

“It’s a system that we developed where we didn’t account for the needs of our Native American people who have lived here since time immemorial,” said Grace Haggerty, endangered species program supervisor for the Interstate Stream Commission, speaking in a July 2021 New Mexico Water Data video.

It can take years, sometimes decades, for tribal nations to navigate the legal maze of negotiating their rights within the massive tangle of other users staking claims. While the northern pueblos have secured water rights through
three settlement agreements, most others have not. A majority of tribes, including the six Middle Rio Grande pueblos, have unresolved water claims that are moving at a glacial speed through New Mexico courts. There are a dozen active water rights adjudications, involving 18 tribal and pueblo nations, with the oldest one filed in 1966.

Phoebe Suina of the Pueblo de Cochiti Nation stands on the shore of Cochiti Lake, which feeds into the Middle Rio Grande Valley.

Kalen Goodluck/High Country News

The state has acknowledged how inconvenient the water settlement negotiations are and has sought ways to speed up the process in recent years, but the system remains imbalanced. State water managers, meanwhile, quickly carve up water among municipalities, industry and private users instead of treating tribal and pueblo nations as partners.

High Country News sat down with Phoebe Suina, a hydrologist from the Pueblos of San Felipe and Cochiti, to talk about water and Indigenous knowledge. Suina talked about having meaningful engagement with tribal leaders in water planning and starting her own consulting company after a catastrophic wildfire.

This interview has been edited and condensed for clarity.

Can you tell me a bit about your company, High Water Mark, and how you work with pueblo communities?
In 2013, my colleague Ryan Weiss and I started a small company called High Water Mark. Around that time, we were working for another, larger environmental consulting firm trying to help tribal communities, in particular the Pueblo of Cochiti after the Las Conchas wildfire. Cochiti Pueblo and the village were severely compromised by flooding in 2011 and 2012 and needed flood mitigation infrastructure in the main Jemez watershed.

After you have a wildfire in a mountainous area, if you get a moderate or severe burn in a watershed, it’s a catastrophic condition and impact to a watershed. The land will not absorb water like it normally could during a normal rain. It becomes hydrophobic, meaning the sand gets so hot during a wildfire — actually becoming similar to glass — (that) raindrops will hit and just immediately run off and can bring everything along, like an avalanche.

I was faced with a decision to leave Cochiti Pueblo to spearhead the company’s federal contract, and I didn’t see myself doing that. However, I realized that I had a certain experience and, some will call it, expertise as a hydrologist and navigating federal funding, navigating compliance, and navigating the real threat that post-wildfire flooding had on the community. So, in a matter of days, we jumped ship and started High Water Mark.

What do you think water-management agencies miss when they don’t include tribal nations when stewarding our watersheds?

I really feel like Indigenous peoples still have that knowledge, that lived experience of being connected to natural resources, like water, that maybe modernization has separated from being an everyday connection. As an example, how many people out of the billions on this earth can say that they’ve drank right from the earth, not from a faucet, not the water bottle? The largest portion are probably Indigenous peoples.

The current system is based on assumptions from back in the early-1900s with their interstate stream compacts and the other water agreements that didn’t have the breadth of understanding or the expertise or the knowledge or wisdom of Indigenous peoples at the table to help the decision-makers create a framework. So if it was deficient in that, how can it be a sustainable system, a sustainable framework, a sustainable way to go forward?
In this state of New Mexico, we have a term called “prior and paramount water rights.” Those that have prior and paramount water rights were not at the table in the early 1900s, when agreements were signed and were decided.

There’s an essence of being — having that direct connection to natural resources, but also how that connection is inherent culturally. To not take it for granted. And so when the tribal leaders and the state engineers and non-tribal governments come together, we tend to create that separation during these water discussions. We say, “OK, here’s a piece of paper and this identifies how many water rights our pueblo people have, as mothers, as daughters, sisters and all those that have gone before us.” I worry that we are veering dangerously from that perspective and are taking water for granted.

This reminds me of something Grace Haggerty of the Interstate Stream Commission said in a video explaining New Mexico’s 50-year plan. Speaking as someone who is in such a high position, she said that the system that operates the Rio Grande River — that it’s a system the U.S. developed that didn’t account for the needs of Native American people who have lived here since time immemorial. And I’m wondering what you make of that?

I appreciate her acknowledging that. People have reached out to me and asked about engaging tribes in these water conversations, and I encourage that. And I wholeheartedly hope that that continues. But let’s now follow up with action. How do we actually put those words into action? And how do we wholeheartedly incorporate the Indigenous wisdom and expertise in plans and laws and policies in how we track water, how we manage water, how we steward water? That will tell me if these are just words, or if there is real sentiment and understanding behind those words.

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