

# PUBLIC PARTICIPATION IN THE ANDALUSIAN WATER ACT

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## Abstract

Good governance, as defined by the European Commission, is characterised by the compliance to principles such as participation. The European Commission White Paper on Governance establishes as a goal "to open up policy-making in order to make it more inclusive and accountable". This implies that the public will be involved in every phase of the policy process, from decision to implementation and final evaluation. With respect to water management, the difference between success and failure not only depends on finding suitable technical solutions, but also on the involvement of those concerned. This is a policy which is well recognised by the NGOs that work to provide water for remote villages in the Third World. It is also important to remember public involvement when developing public water policies for more complex societies in developed countries.

Public participation in the policy process has to be stimulated and encouraged. However, this is not possible without an appropriate institutional framework which can be trusted by the public. The new Andalusian Water Act has regulated public participation. This paper assesses this regulation and considers that the principles for water management are public participation, transparency, proximity and equal treatment of the public in terms of their relationship with Water Management.

Public participation, Water Act, Institutional framework

## Resumen

La participación ciudadana es uno de los cinco principios reconocidos como la base de la buena gobernanza (libro blanco de la gobernanza de la Comisión). Esto es muy comprensible cuando de gestión del agua se trata, pues la mayor o menor participación de los afectados en el diseño, puesta en práctica y evaluación de las políticas de gestión del agua marca la diferencia entre el éxito y el fracaso, la armonía o el conflicto, la garantía del agua o la escasez. Para desarrollar un proyecto hídrico con éxito además del empleo de la tecnología adecuada, es imprescindible la implicación de los afectados. Esto es una máxima que conocen perfectamente las ONG que se dedican a llevar agua a las aldeas más olvidadas del tercer mundo, y que es importante recordar también a la hora de desarrollar políticas públicas del agua en los países desarrollados.

La participación ciudadana en las políticas públicas tiene que ser estimulada e incentivada y para ello es fundamental dotarse de los instrumentos necesarios y de un diseño institucional apropiado.

Andalucía, en uso de sus competencias de autogobierno, ha regulado la participación pública en la gestión del medio hídrico mediante la nueva Ley de Aguas de Andalucía. Esta comunicación evalúa tal regulación, cuyo aspecto positivo es reconocer como principios en la actuación administrativa en materia de agua la participación pública y la transparencia en la gestión. Asimismo, se establece como derecho de los usuarios la participación, de forma activa y real, en la planificación y gestión del agua. Se otorga especial trascendencia a la información como paso previo y necesario a la participación y para ello se establece el Observatorio del agua como órgano institucional de carácter consultivo, pero el texto legal se queda muy impreciso en aspectos fundamentales como en la determinación de los órganos decisorios competentes en materia de agua.

## Introduction

The 1978 Constitution recognises the regional organisation of the Spanish State in the Autonomous Regions and their regulatory competence to manage their own interests. Water management has become part of this context regulated by the Autonomous Regions. This has only been achieved recently in Andalusia when the reform for the Statute of Autonomy of Andalusia was approved in 2007. This meant that the Andalusian water policy had to be developed within the context of the European environmental and governance policy.

The European influence can be perceived within the recent Andalusian Water Act. This Act, which falls in line with the concept of governance, recognises the right that the public have *to participate, actively and truly, in water management and planning. This means that the public will form part of the professional bodies that will take part in the decision-making on Water Management issues. Public participation will be either direct or via organisations and associations that are recognised by the Act that group the public together and represent them, as stipulated by the regulations*' (art 7.1.7 of the Water Act). The consensus reached in the Andalusian Water Agreement, the creation of public panels (work groups promoted by the Administration and in which members of the public who were chosen at random took part, with the aim of understanding public opinion on water issues), and the establishment of the Water Observatory are examples of good practice of public participation. They are also indicators of governance but not a guarantee of one or the other. On one hand, questions, opinions and studies are not always reflected in the decisions made. On the other hand, the opinion from any member of the public can be ignored in organisations that make decisions and where organisational members take part, since the Andalusian society is a society with a young tradition for associations.

## Methodology

Appropriate Water Management in Andalusia has only recently been set up. In January 2005, the transfer of management of the Mediterranean and Atlantic Basin away from the State was introduced. Likewise, from January 2009 the management of the Guadalquivir Basin was also transferred. The institutional agreement has not yet been completed and the development of the regulations is still pending. However, there is evidence that the recent Water Act, Act 9/2010 of the 30<sup>th</sup> July (BOJA n° 155 from the 9<sup>th</sup> August), was approved by the Andalusian Parliament. Title I of the Water Act reads as "Water Management in Andalusia" and Title II reads as "Public participation and the right to information".

Public participation in the Water Management in Andalusia is studied in the first instance within the Water Act regulatory framework. To do this study it is also necessary to analyse the elaboration process of the Water Plans of Demarcations among the Andalusian Autonomous Regions, which are at the final stages of approval. Finally, it is also important to consider the conclusions made by public panels and by organisations. Until now, these organisations, such as the Water Commissions, have been the professional bodies for administrative and social participation in several Water Districts.

## Results and Discussion

From the public participation point of view, the Andalusian Water Act is aimed at establishing a legal framework that stipulates who can make the decisions. These decisions will then develop into public policies which will in turn resolve the conflict of interests caused by the water issue. It is, therefore, essential to have in place an appropriate institutional structure with a regional base. This structure should comply with the policy being developed, its historic evolution and its future prospects.

It is important to learn from historic models and to evolve these earlier models thus adapting them to current needs. A good start has been with the Andalusian Water Agreement, a consensus document in which the Public Administration and several organisations have contributed. These include trade unions, business, ecological, irrigation and consumer and user organisations. However, this Agreement has several weaknesses: on the one hand, there is a deficiency in the number of member associations that have taken part in the agreement, considering that there are many people affected by the water policies who are not members of an association. On the other hand, the consensus that was reached has not materialised effectively in the Water Act which was approved by the Andalusian Parliament. There are still too many issues to be established by Governing Council Decrees. These issues include allocation of professional bodies that will form part of the Andalusian Water Management. Other issues that must comply with the regulations include, for example, the proportionate water allocation among the social participants and the means to access information, the content and structure, together with management and assessment.

The Water Act does not specify how to comply with the obligation of establishing decision-making bodies with social participation. This does not mean that a future establishment of

these bodies via Governing Council Decrees will not respond to the expectations created by the Andalusian public in the Andalusian Water Agreement. However, since such a level of consensus has been reached, the Act should include this point and establish at least the specific bodies, their duties and social participation within these bodies.

In accordance with the statements made above, it cannot be concluded that decisions on the Water Act made by Government Decrees will not respond to the consensus reached. However, this is a topic in which answers cannot be found at this moment. It is important to be informed every time of decisions that are made by the Government in power. The opportunity has been missed to specify more accurately the public water policies because the Water Act in Andalusia has already been approved. However, having said this, there are also important achievements within the Water Act that have to be recognised in terms of public participation. The right to access information is stipulated by the Integrated Management Act for Environmental Quality since the information is considered to be environmental. In this section, it has indeed been established that the Andalusian Water Council is a consultation and advisory body as well as the original Water Observatory. The Water Observatory needs to become an authentic and real platform for social participation and for technological awareness that assesses the water policies in order to make the public truly involved in the decision-making process.

## Conclusions

The Andalusian Water Act includes public participation in the water management process; sets out as an aim public participation in the institutional bodies and in the planning and management; and recognises the active and real participation as a user right. However, the Water Act does not specify the professional bodies, and especially the decision-making bodies, that are going to decide on water policies. The Water Act does not specify either the procedures for an active social participation or the procedures to channel and resolve conflicts between uses and regions. This means that essential topics to elaborate the water policy have been left open, especially if a social consensus has already been reached in the Andalusian Water Agreement. This agreement reflects the feelings of the people represented despite the weaknesses mentioned above. In that sense, the work started with the Water Act has to be completed appropriately by including public opinion from all regions in the water decision-making process. In that respect, the public has to be aware that they are responsible for finding the solutions that they want. They also need to realise that their opinions materialise in the decisions made. Once the joint responsibility issue has been considered, it is important to regulate the level of agreement within the decision-making bodies from a social participation point of view.

## References

Andalusian Water Act, L 9/2010 from the 30<sup>th</sup> July (BOJA n° 155 from the 9<sup>th</sup> August)