

MEETING SUMMARY | January 19, 2016

Colusa SGMA – Governance Working Group Meeting

MEETING RECAP

- Sacramento State University Center for Collaborative Policy (Center) Facilitator Dave Ceppos presented core elements of the Sustainable Groundwater Management Act (SGMA) in order to create a common framework of understanding of issues that the Governance Working Group (Working Group) would be discussing at this and future meetings.
- Meeting attendees learned how SGMA defines Groundwater Sustainability Agencies (GSAs) and what this means in terms of the roles and responsibilities these agencies will have to develop and implement Groundwater Sustainability Plans (GSPs).
- Meeting attendees learned about the opportunity for basin boundary modifications and asked a number of questions to determine if a modification request should be made for the Colusa County.
- Meeting attendees engaged in an interest-based discussion about what needs to be achieved with GSA formation in Colusa County and, conversely, what needs to be avoided.
- Meeting attendees considered common principles to guide collaboration and began brainstorming GSA governance approaches. These discussions will continue at the next meeting.

For more local information please visit the [Colusa County Water Resources Webpage](#).
For information on SGMA please visit the [Department of Water Resources SGMA Webpage](#).

MEETING SUMMARY

Introduction

The meeting began with all attendees reciting the Pledge of Allegiance. The facilitator reviewed the agenda and welcomed introductions by all attendees. He noted that he would present a significant amount of information about SGMA in order to create a common framework of understanding at this and future governance meetings. Discussions about governance are just beginning and thus the Working Group made no decisions at this meeting.

Core SGMA Elements and Proposed Collaborative Process in Colusa County

Mr. Ceppos began his presentation by describing core elements of SGMA. SGMA was passed by the State legislature and signed by Governor Brown in fall 2014, and became law on January 1, 2015. SGMA requires that eligible local agencies in all high and medium priority groundwater basins form GSAs by June 2017 and prepare GSPs by January 2022. Local agencies with water planning, management or land use planning authority can form GSAs. Two subbasins in the area, Colusa and West Butte, are subject to SGMA. Smaller subbasins to the west are not subject to SGMA.

As an initial step to prepare for local SGMA implementation, the County acquired a DWR facilitation support services grant. The County utilized this grant to contract the Center's impartial facilitation services to bring interested parties together and foster collaboration. The

Center will assist GSA eligible agencies and other interested stakeholders (e.g. mutual water companies, private pumpers etc.) to craft and negotiate mutually acceptable preferences for Working Group collaboration and GSA formation. Coordination with neighboring subbasins on SGMA related issues is also of paramount importance. Approximately 6 – 8 Working Group meetings will be held between January and June to enable discussion and deliberation of these early, foundational steps to SGMA implementation in the County.

At this stage of the discussion, the facilitator took several questions from the group. He provided answers when feasible, but also noted that the Center would check with DWR on questions in which the answer was not immediately clear (See Attachment A for DWR responses). At times, others that have familiarity with SGMA also provided responses. Initial questions about SGMA, and associated responses, included the following:

- Question: Once an agency decides to become a GSA, does this mean they are a GSA in perpetuity? Response: No. Draft GSP regulations are coming out soon that will further clarify these issues. Governance will be memorialized early in any GSP.
- Question: If a County groundwater user did not want to be regulated by a GSA, could they opt out? Response: If you are a private pumper and not a de minimis user (less than 2 acre feet per year) you can be regulated by a GSA, and cannot simply opt out unless you wish to be regulated directly by the State.
- Question: Can we look at and learn from other groundwater agreements around the State? Response: Yes, though it should not be presumed that other agreements are the best fit for Colusa County.
- Question: Is it optional for landowners to form a mutual water company and become a GSA. Response: SB13 clarified that a mutual water company can be a part of GSAs, when invited, but does not by itself constitute an eligible GSA.
- Question: At what point will DWR review and approve or not approve GSPs. Response: There are steps that GSAs must go through but ultimately DWR requires that GSPs be completed by January, 2022. GSPs for critically overdrafted basins must be submitted by January, 2020.

Outstanding questions awaiting DWR response

- Question: Can the County let one landowner out to join a nearby GSA or does the County represent all landowners that do not fall under a specific GSA service area boundary? Can they let one person opt out if desired?
- Question: If a mutual water company wants to be part of a certain GSA, do the boundaries of the qualified agency and the mutual water company need to be touching or can they be separate? Would County have to let the mutual water company opt out if desired?

GSA Roles and Responsibilities

Following initial questions about the core elements of SGMA, the facilitator then described the primary role and responsibilities for GSAs. The group took time to review key text from the actual legislation that described the definition of a GSA, different scenarios for how GSAs can

be formed, process deadlines, and how GSAs must coordinate in the preparation of a single GSP or multiple GSPs. The group then considered GSA roles and responsibilities. For example, at their discretion, GSAs may:

- Adopt rules, regulations and ordinances
- Conduct groundwater studies / investigations
- Register and monitor wells
- Require reports of groundwater extraction
- Implement capital projects to meet goals
- Assess fees to cover management costs

Meeting attendees posed a number of questions about GSAs. Responses were again provided where feasible, noting when some questions required clarification from DWR.

- Question: Must a local agency exclude federal and tribal lands from its service area when forming a GSA? Response: Yes and No. Federal lands and tribal lands need not be excluded from a groundwater basin or subbasin; however, those “sovereign” areas are not subject to SGMA nor can they be enforced on by a GSA. DWR strongly recommends that local agencies communicate with federal and tribal representatives prior to deciding to become a GSA and then throughout the process.
- Question: Does SB13 allow for multiple GSPs? Response: Yes, but they have to be coordinated.

Outstanding questions awaiting DWR response

- Question: Would a GSA need to get a warrant to go on people’s property?
- Question: Who determines who is a de minimus groundwater user?
- Question: If you have property in a district, but you are private pumping, will you be forced to be governed by this district or can you be a private pumper?
- Question: How is DWR going to determine if a basin is being managed sustainably? How will this affect us and our management plans? Will we have to focus on problem areas solely? Or does DWR’s evaluation process look at comprehensive management across the basin?

Discussion of Stakeholder Interests

The facilitator pivoted the discussion to focus on the interests of different parties in the room, including noticed and eligible GSAs, mutual water companies, private pumpers and members of the public. The group brainstormed to initially identify what needs to be achieved through the GSA formation process in Colusa County, and, conversely, what needs to be avoided. Responses included the following:

Achieve

- Districts in sustainable water balance
- Sustainable groundwater supply for changing crop types (e.g. permanent crops)
 - Need to discuss how to achieve this
- Adequate representation of private pumpers

- Comprehensive countywide monitoring and data sharing program
 - Increase well monitoring
 - Include private pumpers
 - Real-time monitoring
 - In-house data management
 - Protect/buffer local data
- Special management areas with proportional solutions
- Process brings people together (e.g. surface water districts and private pumpers)

Avoid

- Western areas in the hills lumped in with the valley
- Leaving any landowners out of the process
- Potential negative impacts of State intervention
- Surface water transfer agencies dominating governance and impacts this could have on private pumpers (i.e. potential conflicts/lack of equity)
- Broad brush solutions based primarily on the circumstances in problem areas
- Mandatory monitoring for everyone that eventually leads to restricted pumping

Opportunity for Basin Boundary Modifications

SGMA established a process for local agencies to request that DWR revise the boundaries of existing groundwater basins or subbasins, including the establishment of a new subbasin. The Basin Boundary Emergency Regulation, developed through an extensive stakeholder outreach process, was adopted on October 21, 2015. As of January 1st, eligible local agencies have 90 days to submit a modification request to DWR. Meeting attendees had a number of questions related to whether or not boundaries should be modified in Colusa County.

- Question: Will there be another opportunity to make a boundary modification request after this first 90 days? Response: Yes, there will be another opportunity in 2018.
- Question: If Yolo does a boundary modification does that imply that we have a new southern border? Response: Tentative answer of yes, but need to look into this.
- Question: If we do not do a boundary modification but still have a Colusa GSP, will we still have to coordinate with neighboring counties. Response: Yes, coordination needs to occur across the whole groundwater basin, which extends into other counties. The forthcoming GSP regulations will provide information on coordination agreements.
- Question: Does DWR expect to have a lot of State intervention regarding coordination across political boundaries? Response: The legislation is intended to encourage water managers / water users to work past boundaries, however, DWR recognizes that different counties cannot simply be lumped together. Again, explanation of the coordination agreements in the draft GSP regulations will help clarify this issue.

There were mixed opinions among the group on whether or not to pursue a basin boundary adjustment. Several attendees expressed concerns over the short timeline to prepare and submit a request. Requests are due March 31, 2016, well before there will be final SGMA

governance in Colusa County. Without the GSAs in place, it will be very difficult to make a unified decision or to clarify who will do the work to prepare a basin boundary modification request to DWR. It is also not clear whether or not DWR will provide another opportunity for basin boundary adjustments before the GSPs are due in 2022. At the next Working Group meeting, attendees will discuss sending a letter to DWR expressing the concerns over the current timeline, and requesting confirmation that there will be an opportunity in 2018/19 to submit a basin boundary modification request.

Common Principles and Potential Approaches to GSA Governance

The Center began its efforts to support SGMA implementation in Colusa County by conducting interviews with noticed GSA eligible agencies (The Center will similarly meet with other eligible GSAs after this first meeting). The findings of these initial interviews informed development of a set of preliminary common principles that seem to be held by all interviewees. Towards the end of the meeting the facilitator introduced these draft common principles and suggested that the Working Group consider using them to guide their collaborative efforts. The Working Group then began to brainstorm potential governance approaches that incorporate the common principles and build upon what had been learned during the meeting. Initial responses included the following:

- All GSAs cooperate with each other on enforcement
- Ensure equitable approach to GSA formation (e.g. MOU that brings representatives to the table for areas represented by the County)
- Question: Will land use authority be a tool to inform governance? Response: Tools related to land use authority will be used to help understand governance (i.e. where we are at and what governance will look like)

Due to time constraints, the common principles and potential governance approaches were only briefly discussed and will be revisited at the next meeting.

Meeting Participants

- Denise Carter Supervisor, District 5
- Kim Dolbow-Vann Supervisor, District 1
- Shelly Murphy Colusa County Water District
- Thad Bettner Glenn-Colusa Irrigation District
- John Garner Princeton-Codora-Glenn Irrigation District and Provident I.D.
- Bryan Busch Reclamation District 108
- Lewis Bair Reclamation District 108
- Terry Bressler Reclamation District 1004
- Charles Marsh Reclamation District 479
- Matt LaGrande Colusa County Groundwater Commission
- Jeff Moresco Colusa County Groundwater Commission
- Lorraine Marsh Colusa County Groundwater Commission
- Jim Wallace Colusa Drain Mutual Water Company
- Kelly Boyd Willow Creek Mutual Water Company

- Oscar Serrano Colusa Indian Community
- Jesse Cain City of Colusa
- Chuck Bergson City of Williams
- Mike Mitchell City of Williams
- Sharron Ellis Glenn County
- Kim Gallagher Private pumper
- Craig Bradford Mayflower Farm
- Mary Randall Department of Water Resources
- Hillary Reinhard Provost and Pritchard
- Ben Carter Water Users Group, Benden Farms
- Bill Wallace Member of the public
- Darrin Williams Colusa County Groundwater Commission

Staff

- Mary Fahey Colusa County Water Resources Coordinator
- Dave Ceppos Center for Collaborative Policy
- Rich Wilson Center for Collaborative Policy

ATTACHMENT A - KEY QUESTIONS FOR DWR / STATE BOARD

Colusa Subbasin

Sustainable Groundwater Management Act | Governance Working Group Meeting 1

January 19, 2016

Q: Can the County let a private landowner join a nearby GSA if that private parcel is not in the existing service area boundary of that GSA? Essentially, can a private parcel opt out of County representation if desired?

A: *Ultimately, it's a local decision and would depend on the local agency(ies) that formed the GSA. We've heard from some local agencies (e.g. a water agency) that in order to "let someone join their GSA" it would require an annexation of that private landowner's property. Multiple GSAs in a basin will likely need to coordinate their efforts through a legal document to prepare a single GSP for the basin (definitely if preparing multiple GSPs in a basin). The GSAs will need to explain the basin's governance structure in the GSP, which will identify specific roles and responsibilities related to implementing the basin's groundwater sustainability program. There might be some local flexibility that meets the requirements of the GSP regulations, but, the regulations will not be final until June 1, 2016.*

There is also the text of §10726.8(b) to consider, which states "a local agency cannot impose fees or regulatory requirements on activities outside the boundaries of the local agency." So, even if a GSA "let a private landowner join their GSA" the GSA might not be able to impose fees or regulate that landowner, whereas the County can since they would have jurisdiction in this case.

Q: If a mutual water company wants to be part of a certain GSA, do the boundaries of the GSA and the mutual water company need to be touching or can they be separate? Would the County have to let the mutual water company formally opt out if desired?

A: *All that is referenced in SGMA regarding a mutual water company is in §10723.6(b) – the mutual water company or water corporation could be part of the GSA (not form their own) through a MOU or other legal agreement. It's up to the local agencies forming the GSA to determine how the mutual water company participates.*

Addressing your questions about "do the boundaries of the GSA and the MWC need to be touching" – again, it's not addressed in SGMA, and it's not a question for DWR to answer. But, since only local agencies can form GSAs, and since they need to keep in mind the boundaries of their own service areas when forming, I'm not sure if a local agency could/should include in their GSA a MWC that isn't working directly with the local agency within the local agency's defined service areas. Regarding opting-out of a legal agreement – that would entirely depend on the language of that agreement.

Q: Will a GSA need to get a warrant to go on people's property?

A: *The powers and authorities of a GSA are described in Chapter 5 and the enforcement powers of a GSA are described in Chapter 9. Regarding your question about a warrant, the language in §10725.4(c) relates to this and states: "In connection with an investigation, a groundwater sustainability agency may inspect the property or facilities of a person or entity to ascertain whether the purposes of this part are being met and compliance with this part. The local agency may conduct an inspection pursuant to this section upon obtaining any necessary consent or obtaining an inspection warrant pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure."*

Q: Who determines who is a de minimis groundwater user?

A: *The GSA has a responsibility to determine who is, or is not, a de minimus extractor (groundwater user). Per SGMA, a de minimus extractor means a person who extracts, for domestic purposes (note, not agricultural or industrial, etc.), two acre-feet or less per year.*

Q: If you have property in a district, but you're a private pumper, will you be forced to be governed by this district or can you be a private pumper?

A: *If the property of a particular pumper resides within the service area of a GSA (or the combined service areas of multiple local agencies that have formed a GSA using a JPA, MOA, or other legal agreement) then it seems logical that the property would be regulated by that GSA if it is subject to SGMA. The landowner could choose not to comply, at which point the GSA would need to determine if it will exercise any of its new powers and enforcement authorities (see Chapter 9). This is a local issue to resolve.*

Q: How is DWR and/or the State Board going to determine if a basin is being managed sustainably? Will we have to focus on problem areas solely or will DWR's and State Board's evaluation process look at comprehensive management across a basin?

A: *To completely address this question, we'll have to wait until the GSP regulations are finalized in June 2016. But, in general, the initial GSP will be considered adequate if DWR finds that it meets the requirements of the regulations. With respect to being managed sustainably, that will be determined over time by the thresholds specific to the undesirable results defined in SGMA. In general, a GSP will likely have the local flexibility to define "management areas" that might require more focus than other areas – these areas will need to be defined and supported with reason in the GSP. More details to come.*