The Sustainable Groundwater Management Act in Colusa County

Initial Options for Governance in Colusa County
Outline

I. SGMA Background – Governance
   I. The “Who Among Equals”
II. Governance Options
SGMA Background – Governance

Groundwater Sustainability Agencies (GSAs)

- The “Who Among Equals”
  - 1st Among Equals – Local Agencies
  - 2nd Among Equals – Mutual Water Companies
  - 3rd Among Equals – Private Pumpers / Public
Groundwater Sustainability Agencies (GSAs)

- “Any local agency or combination of local agencies overlying a groundwater basin may decide to become a groundwater sustainability agency for that basin.” (Water Code § 10721)

- “Local agency” means a local public agency that has water supply, water management, or land use responsibilities within a groundwater basin.” (Water Code § 10721)

- e.g. - counties, cities, water agencies, irrigation districts, drainage districts, PUDs, CSDs, or similar
SGMA Background – Governance

Groundwater Sustainability Agencies (GSAs)

- One or more GSAs must be formed per basin / subbasin.

- A GSA may be formed by a single eligible agency, or by legal agreement between two or more eligible agencies.

- Two or more GSAs must prepare a Coordination Agreement (a legal agreement) between them. (Water Code § 10721, 10727)(b)(3), etc.)

- County represents / manages all groundwater conditions outside another managed area (Water Code § 10724)
SGMA Background – Governance

Groundwater Sustainability Agencies (GSAs)

- All GSAs must have eventually have a defined governance approach (as per GSP Draft regs)

  - Documentation of the organization and management structure of the Agency. The documentation shall identify persons with management authority for implementation of the Plan. (Article 5, § 354.6 (b))

  - The legal authority of the Agency with specific reference to citations setting forth the duties, powers, and responsibilities of the Agency, including information demonstrating that the Agency has the necessary legal authority to implement the Plan. (Article 5, § 354.6 (d))
(e) A communication plan adopted by the Agency, including the following:

1. An explanation of the Agency’s decision-making process and how stakeholder input and public response will be used.

2. Identification of opportunities for stakeholder engagement.

3. A description of how the Agency encourages the active involvement of diverse social, cultural, and economic elements of the population within the basin.

4. A schedule of milestones and scheduled dates for known projects or actions.

5. A description of the roles and responsibilities of local agencies and the public. (Article 5 § 354.10 (e))
Groundwater Sustainability Agencies (GSAs)

- SB 13 Added - “A water corporation regulated by the Public Utilities Commission or a mutual water company may participate in a groundwater sustainability agency through a memorandum of agreement or other legal agreement. The authority provided by this subdivision does not confer any additional powers to a nongovernmental entity.”
  (Water Code § 10723.6 (b))
SGMA Background – Governance

**Groundwater Sustainability Agencies (GSAs)**

- Private Pumpers / The Public
  - No special authorities are granted. Only references are:
    - 10723.2 - Consideration of interests of all beneficial uses and users of groundwater
    - 10726.5 - In addition to any other authority granted to a GSA by this part or other law, a GSA may enter into written agreements and funding with a private party to assist in, or facilitate the implementation of, a GSP or any elements of the plan.
Groundwater Sustainability Agencies (GSAs)

• 10724 – Presumption that County will Manage Areas not Covered by a GSA:

  • (a) In the event that there is an area within a high- or medium-priority basin that is not within the management area of a GSA, the county within which that unmanaged area lies will be presumed to be the GSA for that area.

  • (b) A county described in subdivision (a) shall provide notification to the department pursuant to Section 10723.8 unless the county notifies the department that it will not be the GSA for the area…..
10724 – Presumption that County will manage Areas not covered by a GSA:

- (b) …. Extractions of groundwater made on or after July 1, 2017, in that area shall be subject to reporting in accordance with Part 5.2 (commencing with Section 5200) of Division 2 if the county does either of the following:
  - (1) Notifies the department that it will not be the GSA for an area.
  - (2) Fails to provide notification to the department pursuant to Section 10723.8 for an area on or before June 30, 2017.
Colusa Subbasin
**SGMA Background**

**“White Areas”**

- County is presumed to be the GSA over areas that are not covered by another GSA-eligible agency

- If the County opts out, the State will manage those areas
SGMA Background – Governance

GSA Powers and Authorities (Water Code § 10725)

A GSA must prepare a GSP. 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
SGMA Background – Governance

How are domestic well owners affected by SGMA?

• Referred to in SGMA as “de minimis” users IF…
  – Use 2 acre-feet per year or less for domestic purposes

• De minimis users are subject to SGMA, depending on local needs
  – GSAs will decide how de minimis users are addressed
  – GSAs can decide to exclude or include
  – GSAs can decide on fees but cannot require metering
  – May be subject to reporting / fees to State if intervention occurs

• Domestic wells can also be regulated by authorities (counties, water districts, etc.) outside scope of SGMA
SGMA Background – Governance

GSA Roles and Responsibilities

*Interested parties must be included in SGMA planning:*

- All Groundwater Users
- Holders of Overlying Rights (agriculture and domestic)
- Municipal Well Operators and Public Water Systems
- Tribes
- County
- Planning Departments / Land Use
- Local Landowners
- Disadvantaged Communities
- Business
- Federal Government
- Environmental Uses
- Surface Water Users *(if connection between surface and ground water)*
Colusa SGMA – Governance Options

Groundwater Sustainability Agencies Options*

- Single existing local agency
- Single new local agency created through special legislation or LAFCO proceeding
- Combination of local agencies acting together under joint powers agreement or “memorandum of agreement or other legal agreement”

* Courtesy of Richard Shanahan- Bartkiewicz Kronick & Shanahan
Colusa SGMA – Governance Options

Groundwater Sustainability Agencies Options*

- Joint Powers Agreement (JPA)
- Authorized by Joint Exercise of Powers Act (Govt. Code 6500 et seq.)
- Two types
  - Creates JPA as new local agency with separate governing board.
  - Does not create new JPA. Agreement as framework for parties to manage a program or project. Sometimes lead agency designated. Sometimes advisory or oversight board created.

* Courtesy of Richard Shanahan- Bartkiewicz Kronick & Shanahan
Colusa SGMA – Governance Options

Groundwater Sustainability Agencies Options*

- JPA establishment process.
  - Prepare, negotiate and approve agreement
  - If it creates new authority: file with county and Secretary of State; and, new public agency start-up actions.
  - LAFCO not involved.

- JPA parties: local agency, county, city, federal government, tribe, mutual water company; no other private party.

* Courtesy of Richard Shanahan- Bartkiewicz Kronick & Shanahan
Colusa SGMA – Governance Options

Groundwater Sustainability Agencies Options*

- Memorandum of agreement or other legal agreement
  - Intent seems to be a simpler contract or non-JPA contract.
  - MOA sometimes synonymous with MOU.
  - Could be a range from a nonbinding statement of intent to a more comprehensive binding contract.

*Courtesy of Richard Shanahan- Bartkiewicz Kronick & Shanahan
Colusa SGMA – Governance Options

Groundwater Sustainability Agencies Options*

- JPA with limited GSA powers

- Joint Exercise of Powers Act - “two or more public agencies by agreement may jointly exercise any power common to the contracting parties” only to the extent as authorized by their governing boards.

- SGMA defines a GSA to include “each local agency comprising the groundwater sustainability agency if the plan authorizes separate agency action” (Water Code § 10721(j)).
Colusa SGMA – Governance Options

Groundwater Sustainability Agencies Options*

- A GSA and GSP could be structured such that the GSA is responsible for the subbasin-wide SGMA responsibilities (e.g., planning, monitoring, reporting) and that the constituent local agencies are responsible for other localized actions.

* Courtesy of Richard Shanahan- Bartkiewicz Kronick & Shanahan
Colusa SGMA – Governance Options

Groundwater Sustainability Agencies Options*

- Key JPA or contract terms to consider
  - Board structure, governance and voting
  - Allocation of costs and funding
  - Delegation of authority and powers
  - GSP preparation and adoption
  - GSP implementation and enforcement
  - Dispute resolution
  - Term, termination and withdrawal

* Courtesy of Richard Shanahan- Bartkiewicz Kronick & Shanahan
Open Discussion / Q&A