

## **MEETING SUMMARY January 17, 2017**

### **Colusa Sustainable Groundwater Management Act (SGMA) – Legal Review Subcommittee Meeting #1**

#### **MEETING RECAP**

- The Legal Review Subcommittee (LRS) discussed the benefits and disadvantages of a Memorandum of Understanding versus a Joint Powers Agreement to establish a multi-party GSA in Colusa County.
- Some agencies expressed reluctance to rescind their GSA status without a more detailed document than the current MOU.
- The Critical Path timeline will be adjusted to eliminate ratification of the MOU.
- The GSA Workgroup will work on adding more content to the MOU in tandem with drafting a JPA Agreement.

For more local information visit the [Colusa County Water Resources Webpage](#).

For information on SGMA visit the [Department of Water Resources SGMA Webpage](#).

#### **MEETING SUMMARY**

##### **Introduction**

Dave Ceppos, Facilitator from the Center for Collaborative Policy (CCP), Sacramento State University, opened the meeting, introduced himself, and welcomed the Legal Review Subcommittee (LRS) members. Members of the LRS provided introductions. Ms. Murphy, Colusa County Water District, participated by phone. Mr. Ceppos stated the goals of the meeting were to review the current draft of the Colusa County MOU and to leave with a clear sense of any necessary modifications to the MOU, and a timeline for next steps.

##### **Colusa County SGMA Process To-Date**

Mr. Ceppos provided a recap of the work that has been done to-date in Colusa County to form governance. He explained that the process began a year ago. Glenn County has been following Colusa County's process, and both counties will need to integrate their efforts in the near future. The early stages of Governance Workgroup meetings were mostly educational. The group has always had an open door policy and has invited all interested parties, including the public, to the table. It was stated early on, however, that the time would come when the structure of the meetings would change so that the eligible GSA agencies that are participating in governance would be the only entities at the table. The group reached that stage a couple of months ago, after the County sent a letter to all of the GSA-eligible agencies asking for a commitment to participate in SGMA governance or agree to be covered by the County. The participating agencies have been defined. The meetings are still open to the public, but they are more structured.

Early in the governance planning process, two important statements were made by Colusa County Supervisors (Carter and Vann); 1. The County did not intend to be the lead GSA; and, 2. Private pumper representation was critical to the process. The County developed the Private Pumper Advisory Committee (PPAC) to provide representation for the private pumpers outside of water districts. Shortly after formation, the PPAC presented a proposal to the GSA Workgroup of what they wanted included in governance. This was a catalyst for the Surface Water Districts and the County to bring forward their proposals in the form of Common Principles.

During this period, some governance options were considered. CCP proposed the idea of developing a JPA, and the GSA Workgroup spent several meetings over a three month period discussing various forms of governance

related to a JPA. From those meetings, there were a few outcomes; 1. A GSA Workgroup Subcommittee was formed to develop governance recommendations for the larger GSA Workgroup; 2. Most of the agencies expressed an interest in forming a multi-party GSA; 3. There was agreement to include Private Pumper representation on the GSA Board, without specificity of what that representation would look like. As the GSA Workgroup Subcommittee began working on the JPA concept, the Agencies realized that it was too early. They did not feel that there was enough trust among the various entities to develop a JPA Agreement. The Agencies, particularly the Surface Water Districts, proposed an interim step to develop a Memorandum of Understanding. The MOU would define common interest and provide a comfort level to help the group move on to develop a document that everyone could sign on to that would integrate each party's Common Principles.

Mr. Ceppos stressed that the idea of an MOU was brought forward by the Surface Water Districts and it came from a lack of confidence that the group of GSA-eligible agencies would all be able to work together.

The GSA Workgroup then shifted its attention to the draft MOU. This document has not been developed by a lawyer, it is the result of an effort by Mr. Ceppos to consolidate all of the Common Principles. The draft MOU reflects a document that all parties have weighed in on. It is an embodiment of mutual interests and reflects the spirit and intent of the participating agencies. Mr. Ceppos urged the attorneys not to deviate from the content in the MOU as it is a reflection of the stakeholders' work.

### **Current Status and Next Steps**

Mr. Ceppos explained that the GSA Workgroup has always discussed a single, overarching GSA structure, combining resources, and implementing SGMA at the most local level. The LRS needs to discuss whether the Colusa GSA Workgroup is going to continue on the path of the multi-party MOU leading to a multi-party JPA, or focus on a JPA. Mr. Ceppos posed the following question to each agency representative around the table: Is there any agency that is opposed to the MOU leading to JPA model, and the idea of a multi-party GSA?

**Colusa County Supervisor Carter:** The GSA Workgroup has worked hard on the Guiding Principles and the MOU. It makes sense to stay on the path of the MOU. Some important details such as voting and funding still need to be worked out. It's up to us as a group if we need to move forward on a JPA – there might be cost savings. What we have worked on to develop the MOU is very important. Ms. Carter stated that she does not know how long it will take to develop a JPA and that could have some bearing on the path forward.

Mr. Ceppos mentioned that he works very closely with SGMA leadership at the California Department of Water Resources (DWR) and the State Water Resources Control Board (SWRCB). Staff at both agencies has told him that an MOU will be an acceptable document to meet the June 30 deadline. As long as we can define that there is no overlap and there are no unmanaged areas in the basins, an MOU is a functionally acceptable tool. The Critical Path timeline that has been presented to the GSA Workgroup outlines work being done on the MOU, moving on to ratification by mid-February. Then, we would move on to developing the JPA simultaneously. We could start working on the JPA now, and if it can be completed by June 30, that would be great. If not, the MOU will serve as a functional equivalent to fall back on.

**Mr. Donlan, representing Colusa County:** Having the MOU as a backstop if the JPA can't get completed by June 30th makes sense. Defining detail in the JPA is where issues will come up that could slow progress. It seems like a good approach to go with the MOU now but also push forward on the JPA.

**Mr. Vanderwaal, Reclamation District 108:** He views the MOU as a success. It has helped the various entities gain understanding and build trust. Moving into a JPA would help accelerate the process. Voting and funding are

going to be the big issues. The timeline on getting agreement on those items will help to determine which document we go with (MOU or JPA). RD 108's approach would be to pursue the JPA with a sense of accelerating the process.

**Mr. O'Brien, representing RD 108:** He has concern about the June 30<sup>th</sup> deadline to establish GSAs for the subbasin. Mr. Ceppos has stated that the MOU will suffice. Mr. O'Brien has concerns about this – he is not sure it is the functional equivalent for a JPA. He would like to have something in writing from DWR and SWRCB. He understands that the GSA Workgroup has been through a long process and they are working on building trust.. A JPA will be critical for getting into the hard issues of funding and voting, etc. The sooner the group can get to a JPA, the better. He is in favor of getting the MOU completed as soon as possible and moving towards the JPA.

Mr. Ceppos stated that we can follow up on getting something in writing from DWR and the SWRCB regarding the MOU being acceptable.

**Mr. Atlas, representing Colusa County Water District, Princeton Glenn Codora Irrigation District and Provident Irrigation District:** It is true that SGMA does state that agencies can enter into an agreement, either an MOU or JPA. We need to ask them if we have not resolved overlaps by June, but we have an MOU that states we are working on resolving the overlaps, will that be acceptable?

Mr. Ceppos said that the overlap that exists in both Colusa and Glenn Counties is primarily a result of the noticing of the Counties. There are no other overlapping agencies. The County needs to be satisfied that their interests and their constituents' interests are satisfied before rescinding their GSA. If the County rescinds their GSA status, it would remove the overlaps, but there would be six other agencies that are currently noticed. If the entities then moved forward to sign the MOU and file as a multi-party GSA, the agencies would then overlap themselves if they did not all rescind their GSA status, and that would not be acceptable.

**Comment:** Supervisor Carter stated that it has always been the intent to have all agencies rescind their notices and then sign the MOU to form one GSA.

**Comment:** Mr. Atlas stated that the three districts that he represents have agreed that if the terms of a Joint Powers Agreement are acceptable to them they will rescind their GSA status. They want to know what the final structure is going to be. The MOU probably won't have the final structure. He suggests that the group take the work that has been done on the draft MOU and merge that into the draft of the Yolo County JPA and dedicate efforts to getting that done by June 30. He believes Yolo County has a good model to start from.

**Question:** Mr. Ceppos asked Mr. Atlas if his clients were on board to sign on to a document as an interim step, or if they need to have all of the details worked out in order to sign. **Answer:** Mr. Atlas stated that they are willing to sign but not to rescind their GSA status. He believes that in 4-6 weeks we can have 80-90% of a JPA done. We need to know how big the GSA Board is going to be and how many votes the County will have. This needs to be decided by June 30.

Mr. Ceppos mentioned that the Yolo County Voting Subcommittee met and they will be recommending one vote per entity on their GSA Board.

**Mr. Williams, Private Pumper Advisory Committee (PPAC):** He has not talked to any private pumpers that have an issue with the MOU. The private pumpers are good with the current path.

**Mr. Garner, representing the Berlin Water Agency being formed in the Arbuckle area:** He is supportive of the MOU. He commended Colusa County on their approach and stated that the private pumpers he is working with

have high regard for the County. They are willing to do whatever needs to get done to expedite this process. He asked his clients if they could trust a third party, such as a neighboring Water District or the County to represent them until their District could get up and running and sign on to the JPA, and they were agreeable.

Mr. Ceppos asked Supervisor Carter to state the County position on private pumper representation on the GSA Board. Ms. Carter stated that the idea is to have two Groundwater Commissioners serve on the GSA Board representing the white areas of the County. There is a large private pumper area in the County and they are an important part of the process. The County is still deciding on the requirements for a newly formed Groundwater Commission. Once a new Groundwater Commission is seated, the PPAC will be dissolved and the Groundwater Commission will take on the role of representing the private pumpers. Mr. Ceppos mentioned that it is still to be determined what authorities those two private pumper representatives would have on a GSA Board.

**Mr. Bettner, Glenn Colusa Irrigation District:** They are comfortable with the current process. If we can get to a JPA, that would be great. Their intent is to let the legal representatives work on the JPA language while the GSA Workgroup works on governance. Glenn County is a concern. GCID is in both counties. There may be a JPA in Colusa and an MOU in Glenn. That gives the MOU in Colusa some attractiveness for GCID because both counties would be on a similar track. Mr. Bettner would also like to see something in writing from DWR stating that the MOU will be sufficient for the June 30 deadline.

**Mr. Ferguson, representing GCID:** He is concerned with any legal risk to the District and has the June 30 deadline in mind. He believes that a letter from DWR would minimize risk if we go the MOU route, or we could eliminate risk with a JPA.

**Mr. Ruiz, Maxwell Irrigation District and Westside Water District:** He is supportive of the MOU process. If we can get to a JPA, that would be great. Working on a parallel path is a good approach.

**Question:** Mr. Ruiz asked Mr. Atlas to clarify, if there is a JPA in place, would his districts rescind their GSA status? **Answer:** Mr. Atlas replied, yes.

**Question:** Mr. Ferguson asked for clarification, regarding the MOU, would it be enough to prompt the County to rescind? **Answer:** Ms. Carter said that she has been under the impression that all of the agencies would rescind with the signing of the MOU and now she is hearing that some of the Districts will not. The path has been to sign the MOU, each agency rescinds its GSA status and the group refiles as a single GSA. Yes, the County was willing to rescind with the understanding that everyone else would do the same.

**Comment:** Mr. Atlas said his Districts want to know what the organization is going to look like before rescinding. They want that detail in some agreement. He does not expect the County to rescind before anyone else if they are not ready.

**Question:** Doesn't Glenn County have to be on board for the agencies that span both counties to rescind their GSA status? **Answer:** Yes.

**Question:** If we have an MOU signed by June 30, but we still have overlap issues, can we get a letter from DWR saying we are in compliance? Maybe we can avoid this rescinding conversation. **Answer:** There will be a requirement for a shapefile/mapping element on June 30. A mapping that shows overlap will not be accepted. Perhaps there will be a group of agencies that are willing to rescind their GSA status and to sign on to the multi-party agreement, and one or two that are not willing to rescind. They can go on their own. The multi-party

group can go on to pursue the current path. Mr. Ceppos mentioned that there is no statutory language on the process to rescind a GSA filing.

Mr. Ceppos reviewed the Critical Path timeline that he developed for the GSA Workgroup. On the current timeline, the JPA would not be completed until November 2017. Discussion took place regarding timeline for GSA formation, including a 45-day notice leading up to a public hearing, and then a 90-day wait period after filing. On the timeline, we start the GSA noticing work on May 1.

**Question:** Is it realistic to get a JPA formed in three months? **Answer:** Mr. O'Brien stated that it would be challenging.

**Comment:** Mr. Donlan mentioned that it is a possibility for the group to rely on the County's current GSA filing and modify that filing to be replaced by the new multi-party GSA. This way, there would be no requirement to go through the 90-day wait period. The Joint Powers Agreement would hopefully give the Agencies a level of comfort.

**Comment:** The 90-day period can start on June 30, 2017, then you would have to sit and wait for 90 days.

**Comment:** Ms. Carter stated that it seems ambitious to get all of this done by May. Could we put the language in the MOU to get enough clarification?

**Comment:** Mr. Atlas said that he prefers to take the Yolo JPA and use that as a guide.

Mr. Ceppos asked the group if they felt the MOU needed to go through the signatory/ratification process or if we just need a final cleanup on it, knowing that it will be part of the JPA?

**Comment:** Mr. Bettner said that the JPA and MOU should look fairly identical except for some of the details that would be part of the JPA. We can use a JPA example that we feel comfortable with and integrate the MOU. If we can't get to the JPA by June, then we have the MOU that we can pull out of the JPA. The GCID Board has looked at the MOU and they are okay with it. They have not had the legal review. It seems like a lot of work to go through the legal review of the MOU and then move on to a JPA.

**Question:** Mr. Ferguson asked for clarification on the objective of the MOU. **Answer:** Mr. Ceppos explained that the MOU defines the interests and Principles that will build trust. It is a stand-alone document. **Question:** Is it intended to be a document that is submitted to DWR? **Answer:** Not if that can be avoided, if we can get a JPA in place by June. The other option is to enhance the MOU with items that would be in a JPA. This is still to be determined. If we are running into delays on issues of voting, funding, etc., then we will focus on a more robust MOU.

Mr. Ceppos summarized that the plan going forward is to dispense with ratification of the MOU, continue to add substance to the MOU, continue to work on something that is between a MOU and a JPA, and get as much structure defined as we can. As we get closer to June 30 we will either have a ratified JPA or something slightly less than that, but more than the current MOU. At some point we will have to revisit the question of agencies rescinding their GSA status.

**Question:** Does it make sense to coordinate this with Glenn County? **Answer:** Yes, that's exactly what is happening.

**Next Steps/Action Items:**

- Delete the February 20, 2017 item from the Critical Path timeline (ratification of MOU)
- Mr. Donlan to complete a legal review clean-up on the MOU by Friday, January 20 and send to the other attorneys on the LRS
- LRS attorneys to complete legal review of the cleaned up version of the MOU by Friday, January 27, and if possible, by Thursday, January 26 in advance of the January 27 GSA Workgroup Meeting
- GSA Workgroup to go forward with the January work on the Critical Path timeline
- Mr. Ceppos to work with Mr. O’Brien to review the Yolo County JPA document and potential integration with the Colusa County GSA Workgroup efforts
- Agenda items for the January 27 GSA Workgroup meeting to include:
  - Legal Review of MOU
  - Boilerplate JPA with three or four items that the GSA workgroup needs to work out
  - Proposed number of private pumpers on GSA Board
  - Authorities of private pumpers on GSA Board
- Get in writing from DWR and SWRCB that an MOU is an acceptable agreement for the June 30 deadline

By May 1, we might not have all the details, but maybe enough for the Agencies to feel comfortable signing on.

**Participant List**

➤ Kevin O’Brien	Downey Brand representing Reclamation District 108
➤ Darrin Williams	Private Pumper Advisory Committee, Proposed Berlin Water Agency
➤ Rob Donlan	Ellison, Schneider, Harris and Donlan LLP, representing Colusa County
➤ Mark Atlas	Atlas Law representing Princeton and Provident Irrigation Districts and Colusa County Water District
➤ John Garner	Garner Law Office, representing proposed Berlin Water Agency
➤ Thad Bettner	Glenn Colusa Irrigation District (GCID)
➤ Bill Vanderwaal	Reclamation District 108
➤ Denise Carter	Supervisor, County of Colusa
➤ Dan Ruiz	Maxwell Irrigation District, Westside Water District
➤ Aaron Ferguson	Representing GCID
➤ Shelly Murphy (phone)	Colusa County Water District

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