

## MEETING SUMMARY March 21, 2017

### Colusa Sustainable Groundwater Management Act (SGMA) – Legal Review Subcommittee Meeting #2

#### MEETING RECAP

- The Legal Review Subcommittee (LRS) met to review and provide comment on the latest draft version (Version 4) of the Colusa Joint Exercise of Powers Agreement (JPA) establishing the Colusa Groundwater Authority.
- There are important policy-related items in the JPA that will need to be discussed by the GSA Workgroup.
- Subcommittee members agreed that any separate funding Agreement should remain flexible and not be too detailed so as not to constrain the Authority's role.
- Regarding ratification of the Memorandum of Agreement (MOA), it was decided to wait and track the progress of the JPA. If it seems that the JPA is bogging down, we will follow up with signatures on the MOA.
- The LRS was agreeable to the County being Administrator and keeper of records.

For more local information, **including all meeting materials**, visit the [Colusa County Water Resources Webpage](#). For information on SGMA visit the [Department of Water Resources SGMA Webpage](#).

#### MEETING SUMMARY

##### ➤ Introduction

Dave Ceppos introduced himself as the facilitator for the Colusa County GSA formation process and the Associate Director of the Center for Collaborative Policy (California State University, Sacramento). He welcomed the Legal Review Subcommittee (LRS) members and provided a review of the agenda.

Members of the LRS provided introductions. Mr. Ceppos provided background on the GSA process in Colusa County, and the MOA and JPA processes. He mentioned that the County has provided Rob Donlan's services as the coordinating counsel for development of the JPA. The goal is to get the JPA to the point that it will serve as the Agreement for the Colusa County Groundwater Sustainability Agency (GSA) by June 30, 2017. Mr. Ceppos said that he has spoken with the Department of Water Resources (DWR) and the State Water Resources Control Board (SWRCB) and they have confirmed that the current Colusa MOA will not be sufficient. The Agreement must have an explicit statement that the Agreement will form a specific GSA.

Mr. Ceppos explained to the group that current support for the Colusa GSA Workgroup has been primarily coming from the County, with DWR providing funding for facilitation support services. There is a need for a separate funding Agreement to protect the contributing agencies for the next two years.

##### ➤ Discussion – JPA Review and Revision

Mr. Donlan suggested that today the Subcommittee could work through the draft JPA document and decide what items are policy-related and what are purely legal. The Subcommittee can focus on the legal issues and identify for later review the key policy items that need to be decided by the participating agencies. To date, Mr. Donlan has not imposed any policy thoughts on the current version of the JPA.

The LRS proceeded to review the draft JPA.

**Recitals, Item D; Comment:** The last four lines should be removed. This is stated elsewhere.

**Action: Recitals D: remove text after "...portions of the Basin..."**

**Comment:** We need to include the West Butte Subbasin in the JPA.

**Comment:** Inclusion of the West Butte Subbasin is something that needs to be decided by the GSA Workgroup. The Workgroup decided previously to include the West Butte Subbasin when it was thought that RD 1004 was participating. They have since decided to be a stand-alone GSA. This will be an item of discussion at the next GSA Workgroup meeting.

Mr. Donlan asked if the group wanted to get signatures from the agencies on the MOA. It was decided to wait and track the progress of the JPA. If it seems that the JPA is bogging down, we will follow up with signatures on the MOA.

Mr. Donlan mentioned that **item F in the Recitals** on page 1 is a **policy issue** that needs to be worked out. It addresses the roles of the various members and the GSA itself. The Yolo JPA addresses some of this, and some concepts from the Yolo version have been included. Mr. Ceppos mentioned that Yolo County has enough data to define Management Areas (MA). Colusa is not there yet. There are differences between how Yolo is delegating authorities. Mr. Donlan said that the GSA needs to be the ultimate implementing agency, and the JPA needs to reflect this. He has heard this both from DWR and from SWRCB. Mr. Atlas mentioned that in the current version of the Yolo Agreement, the MAs have the initial responsibility of implementing the Groundwater Sustainability Plan (GSP) which is adopted by the GSA. However, if a MA is found to be out of compliance, then the GSA has to step in. Mr. Ceppos said that DWR needs to see an ultimate backstop.

**Comment:** Mr. Ferguson (Counsel to Glenn Colusa Irrigation District) said that in the current version of the Colusa JPA, the language states that members will be responsible for their service areas, but they will not be stand-alone GSAs. His concern is that some implementation obligations will require the authorities of a GSA and they won't have the power to do these things, but they will be held responsible for financing. He has a concern that the agencies will be hamstrung by having obligations but not having the powers to implement SGMA authorities.

**Comment:** Ms. Murphy (Colusa County Water District) said she doesn't see it that way. The GSA will be implementing the actions in the plan.

**Comment:** Mr. Ferguson said that the language says that the GSA will only have a coordinating and administrative role.

**Comment:** Ms. Carter (County of Colusa) stated that the Colusa GSA will have a greater role.

**Comment:** Mr. Donlan said that regarding revenue, that is a valid point. The members will be doing the legwork. In order to generate the revenue to do the work, the GSA has financing powers that the members do not. Mr. Ferguson's point is very important related to raising revenues.

**Comment:** Ms. Carter said that we are talking about doing a county-wide assessment.

Mr. Ceppos said this is a valid point because agencies don't want their landowners to be double-charged. There are other details that need to be decided related to who collects the funds, etc. We have talked about a separate Funding Agreement. How far do we go to put together a funding plan when we don't know how the Prop. 218 will go, or what the findings of the Supreme Court will be? How much detail do we want to go into, long-term, regarding long range revenue generation and funding when it won't be in place for a couple of years?

**Comment:** Mr. Donlan said that this is one of the huge policy issues. A district cannot contribute revenues raised unless those revenues are specific to the purpose. Even when contributing seed money, can an agency be reimbursed? We don't know.

**Comment:** Mr. Atlas (Counsel to Colusa County Water District, Princeton and Provident Irrigation Districts) said he thinks that an agency can include SGMA implementation in its revenue raising efforts. The question is how long should the individual agencies be contributing to the multi-party GSA? The GSA has the authority to generate funds. We need to get it to that point as soon as we can.

Mr. Ceppos said that he has had conversations with some of the Agency representatives and asked them how they can justify contributions to this GSA for the first two years. The answer has been that this is a regulatory burden and it is something that we have to do.

**Comment:** Mr. Atlas said that the big question is how long the agencies are going to have to fund this effort. Regarding how much detail needs to go into the Funding Agreement for the JPA, he thinks not too much. In the Yolo JPA there is not a lot of detail on financing. The GSA Board has the authority to come up with a budget every year.

**Comment:** Mr. Ferguson said that he thinks the Funding Agreement needs to stay flexible and not constrain the GSA's role.

**Comment:** Ms. Siprelle agreed that the JPA language should stay flexible and that the GSA needs to be responsible for implementing SGMA.

**Comment:** Ms. Carter said that our discussions have always talked about the participating agencies funding the GSA for the first two years until we can get a Prop. 218 process in place.

**Comment:** Mr. Donlan agreed that there should not be too much detail in the JPA, however at the meeting in Glenn County he heard a lot of assumptions and we need to make expectations clear so there are not disappointed parties.

Mr. Ceppos said that this is the rationale for developing a Funding Agreement to cover shared expectations and serve as a contract. Then we will need to determine if reimbursement is possible.

**Comment:** Mr. Donlan said there are a lot of unanswered questions right now, but having a general policy discussion about the wording in the JPA is a good idea for no other reason than making sure that everyone is informed that this is something that still needs to be worked out even after the JPA is implemented.

Mr. Donlan referred back to Ms. Siprelle's comment regarding **Item F in the Recitals** about how much authority the GSA will have. This is another big **policy issue** that we inherited from the Yolo County version of the JPA. This will have to be worked out, as a separate issue from the Funding Agreement.

**Comment:** Mr. O'Brien (Counsel to RD 108) said one thing that is important re: the Funding Agreement is that the GSA will have no reimbursement obligation in the absence of a written contract. There are a lot of assumptions about being reimbursed for costs incurred during the first two years, but it needs to be clear that unless there is a written contract in place, there is no reimbursement obligation from the GSA.

***There is language in the Yolo JPA regarding contributions of members and use of employees. Mr. O'Brien will send the revised language to Mr. Donlan and Mr. Ceppos.***

**Comment:** Ms. Carter, referring to **Recital F**, said that our GSA will serve more than a coordinating and administrative role. Mr. Donlan said that this is a very big **policy issue** that needs to be worked out.

There was more discussion about levying a Proposition 218. **Mr. Donlan will draft language for a basin-wide GSA tax.**

**Page 2; Question:** Will the GSA cover all of Colusa County’s SGMA responsibilities regardless of basin, or is this GSA just covering the Colusa Subbasin? **Answer:** This will be a discussion at the next GSA Workgroup meeting.

**Action: Definitions, K, Strike Management Areas**

**Article 2.2; Comment:** The second part of the sentence should go in another section or become a separate item.

**Article 2.2; Action: Move the second half of Article 2.2 to a separate bullet #2.4: “To the extent a Member determines...within the Basin.”**

**Article 2.4;** There was discussion that if a member agency withdraws from the GSA, there needs to be some language in the JPA that the GSA will do a partial rescission to allow that agency to file as a standalone GSA. There should also be language stating that the GSA will stay in full force and effect if an agency withdraws.

**Action: Add language referring to member withdrawal to Article 2.4.**

**Article 2.3; Comment:** Why does this Article identify water budgets specifically? This is called out in other places in the JPA also. **Action: Article 2.3; remove reference to Water Budgets. Add language that the JPA will coordinate with other GSAs in the Subbasin.**

**Article 3.4; Comment:** Ms. Siprelle and Ms. Kollars (Counsel to the City of Williams) had provided comments regarding requirements of a GSA to engage the public. Ms. Siprelle thought it would be a good idea to include outreach language, to enumerate those requirements and spell out that the JPA will meet those requirements.

Mr. Ceppos said that Article 5 of the GSP regulations spells this out.

**Article 3.4; Action: Ms. Siprelle to provide language to Mr. Donlan regarding public outreach to be added to Article 3.4.**

**Article 3.3; Comment:** There should be a positive statement that the JPA will be a public entity separate and apart from the members. **Action: Add to Article 3.3 that the JPA is a public entity separate and apart from the members.**

**Article 3.5; Comment:** Ms. Siprelle asked if the group wants to add all of the details regarding the authorities of a GSA.

Mr. Ceppos said that SGMA has very few “shalls” and lots of “mays.” These are all “mays.” This JPA has not yet been formed and doesn’t know what it is going to do yet. Do we want all of these details?

**Comment:** Mr. Donlan said it is more important to define what the JPA cannot do.

**Article 3.5; Comment: Ms. Siprelle said that it is okay to leave the GSA authorities details out of Article 3.5.**

**Comment:** Mr. Donlan said that the proposed GSA board has one mutual water company appointed by the County. Is the Mutual going to sign the JPA? Mr. Donlan said that he has spoken to SWRCB and the Mutual can

sign the document if the County is a signatory. But as it relates to the common powers, the common power is the least common denominator. The Mutual will have no extra authority just because it is a GSA member.

If the Mutual signs, it will be a Member. If it doesn't sign, the members will only be the public agencies. We need to keep in mind these common powers. We want this JPA to exercise the powers afforded by SGMA, not the common powers. Mr. Donlan said he thinks it is okay the way it is currently drafted.

**Action: Article 3.5; Delete "all powers commonly held by the Members..."**

Mr. Ceppos said, related to powers of appointment, we have three examples of entities that are not Members; two private pumpers and Colusa Drain Mutual Water Company (CDMWC). None of these are presumed to be signatory. Are they called appointees, or affiliates? Who appoints them? It is presumed the County will appoint the private pumpers. Can all of the Members be responsible for the appointees? Can they sign and then as a group appoint those three? Or should the County appoint them? Does it matter?

**Answer:** It does not matter contractually. Maybe it does politically. This should be decided.

**Comment:** Mr. Donlan said this group needs to address whether they want elected officials or staff on the JPA board.

Mr. Ceppos said he is not getting a clear answer on this.

**Comment:** The SGMA legislation doesn't address this.

**Comment:** Mr. Donlan said that The Joint Powers Agreement will define this. The way it is currently set up, it is elected officials who sit on the board, except for the appointments.

**Question:** Should the private pumpers and CDMWC be "representatives" rather than "members?"

**Article 4.1; Action: For CDMWC, change "member" to "representative." For the private pumpers, strike "members who are," so it says "Two private groundwater pumpers..."**

Mr. Ceppos asked if the County is going to appoint these three representatives. In the case of a removal, does the removal take place by the entity that does the appointing, or by the JPA as a whole?

**Comment:** Article 4.2 covers that. The Appointer would have the authority.

**Article 4.2; Comment:** We do not need to define terms, it should be up to each agency.

**Article 4.2; Action: Remove reference to two year terms and have it be at the pleasure of the individual agency.**

**Article 3.6 (a); Comment:** Can we move that to the bottom of the list so it doesn't start out negative? **Action: Move Article 3.6 (a) to bottom of the list of items in Article 3.6.**

**Article 3.9; Action: After more discussion it was decided to remove everything after the first sentence in Article 3.9.**

**Mr. Atlas suggested Mr. Donlan look at item 3.10 in the Yolo JPA. There is some really good language about employees of the JPA. Action: Mr. O'Brien will send this language to Mr. Donlan.**

Mr. Ceppos asked if the members that contribute staff, etc. would be able to deduct the contribution or cover it as in-kind rather than a cash contribution. Will it be a separate agreement?

**Comment:** Mr. O' Brien said it would need to be part of a separate agreement or contract.

**Article 3.10 (b); Action: Change the word "employ" to "contract with."**

**Article 4.1; Question:** Mr. Ferguson said that regarding private pumper membership, the JPA says these members are operating a groundwater well that is not located within the boundaries of any of the above referenced entities, but the County is referenced as one of those entities. Do we need to carve out all the non-county entities? **Answer:** We need to scratch that line because the County has not decided if the Groundwater Commission members will be strictly in the white spaces.

**Article 4.1; Action second to last bullet; remove: ... "(a) operate a production groundwater well that is not located within the boundaries of any of the above referenced entities, and (b)..." Add "upon recommendation of the Colusa County Groundwater Commission."**

*Mr. Ceppos and Ms. Carter left the meeting, and Mr. O'Brien left the conference call.*

**Article 4.7 (d); Action: Strike "...related to the function of the Authority."**

**Article 4.7 (b); Action: Replace "...property related..." with "...other..."**

**Article 4.7 (f); Action: Add language about termination of members.**

**Articles 6.1 and 6.3; Comment:** If there is a new entity that wants to join, the MOA says it is automatic. Do we need to add language in the JPA about addition of new members by the Board?

**Article 6.1; Action: Change the language to include a procedure to add new members.**

**Question:** New agencies formed after June 30, 2017 can be let in, but should the language be different for current GSA-eligible agencies that have not been participating?

A discussion was held regarding how to bring on new members, voting, reimbursement, etc. This will need greater clarification.

**Question:** Was the policy decision to include any agency or just new agencies? **Answer:** Yes, the intent was to include any agency. There would likely be some back fees. This could be included in a funding Agreement.

**Comment:** Mr. Donlan said that any payment by a newly joining agency should be an offset reducing future obligations rather than a reimbursement.

**Article 4.9; Action: Strike Article 4.9, it is covered in Article 3.5 (c). Update Article 3.5 (c) by inserting language that is similar to Article 4.9, provided that in the event of a conflict, and bylaws language.**

**Article 4.10; Question:** Is everyone okay with the County being Administrator and keeper of records? **Answer:** Yes

**Article 4.7 (f); Question:** Do we need a supermajority for approval and modifications of the GSP? It could be difficult if there are many technical modifications to the GSP. **Answer:** The GSP can deal with policy. The technical work can be in the Appendices so it is easily modified.

**Article 5.1; Comment:** Mr. Ferguson said that this article deals with finance authority. A concern is that each Member is responsible, but since we are forming a multi-party GSA, each member is not a stand-alone GSA, so they can raise the revenues individually.

**Question:** Can the GSA delegate to a Member the authorities under SGMA, such as the regulatory fees?

**Article 5; Comment:** Article 5 is referring to the first 2 years. Not sure that this article is specific to the future GSA. The first two years will be funded by the Agencies, or however long it takes to get the 218 in place.

**Article 5.1; Action:** *Define the terms of Article 5.1; Add language that the Agencies' financing structure will be in place for two years, per County fiscal year (July 1-June 30). Add language that the Members will work under the Financing plan for two years, until a Proposition 218 can go into effect, or whichever comes first.*

**Article 5.1; Action:** *Strike last sentence of Article 5.1.*

**Article 5.1; Comment:** Everything after "Exhibit C" developed in Yolo has been to be moved to the Reservations section, Article 3.

**Article 5.2; Comment:** The Funding Agreement will include these details. Maybe we stay silent in the JPA.

**Action:** *leave in language that the JPA will finance the effort for two years, and delete Article 5.2.*

**Article 5.3; Comment:** Ms. Siprelle suggested including language about insurance. **Action:** *Include Ms. Siprelle's suggestion to address insurance in Article 5.3.*

**Article 5.7; Comment:** This should be addressed by the GSA Workgroup.

**Article 5.5; Action:** *Change fiscal year to match the county (July 1-June 30)*

**Article 5.11; Comment:** This Article was added to the Yolo Agreement. Colusa's financing is different. **Action:** *Remove Article 5.11.*

**Article 5.12; Action:** *Remove Article 5.12, this will be addressed in the Funding Agreement.*

**Article 6; Comment:** Termination will be by supermajority vote.

**Article 6.3; Comment:** There needs to be dispute resolution language, and a procedure for mediation. This should be in a dispute resolution clause. **Action:** *We can add a dispute resolution process to a boiler plate Miscellaneous Provisions and cross reference it in Article 6.3.*

**Article 8; Comment:** This group plans to develop MAs. We have been writing them out of the JPA. Instead of Article 8, should we note this in Miscellaneous Provisions? We could reference that MAs will be part of the GSP. GSP aspirational items could be addressed in another Article.

**Comment:** Change Article 8 to be a broader statement about the concept of elements of a GSP, in very broad terms. This would include items that shall be considered in a GSP.

**Articles 7 and 8; Action:** *Combine Articles 7 & 8 and include any forward looking sustainability planning elements.*

**Articles 8.3 and 8.4; Comment:** These articles get too far into the GSP.

**Article 8.1; Action:** *The role of the GSA needs to be updated to reflect Colusa County's GSA.*

**Articles 7 and 8; Comment:** There are a lot of GSP elements in the JPA. Mr. **Action: Mr. Donlan will go through the JPA and simplify sections 7 & 8 about what will be considered in the GSP.**

**Question:** GSA formation is California Environmental Quality Act (CEQA)-exempt. Are GSPs are subject to CEQA?

**Answer:** No, the legislation is silent on the GSP, but it is not exempted. GSAs are specifically exempted. Some of the MOAs and JPAs have gotten into a lot of detail, which could be a concern.

**Comment:** Some Agreements have the County as a catch-all entity. We may want similar safety-net language in here. It is included in Article 3.4 in the Yolo Agreement.

**Article 3.5; Comment:** Regarding powers of the GSA, the least constraining party should be called out here.

**Action: Mr. Donlan said he will identify the county in Article 3.5 and the group can discuss further.**

#### **Next Steps/Action Items:**

- Address at the next GSA Workgroup meeting ;
  - Development of a specified mechanism to bring on new members
  - Mechanism for removal of members, should this be a supermajority vote, etc.
  - Discuss whether to include the white spaces in the West Butte Subbasin in the GSA
  - Article F; Roles of the GSA
  - Article 5.7, Depositary
  - Voting details
  - Are agency contributions reimbursed, credited, in-kind?
  - Dispute resolution
- Work on developing a Funding Agreement to cover shared expectations and serve as a contract. Determine if reimbursement is possible.

#### **Summary of Actions Regarding the JPA:**

- Recitals D; Remove text after "...portions of the Basin...".
- Mr. O'Brien will send language from the Yolo JPA regarding contributions of members and use of employees to Mr. Donlan and Mr. Ceppos.
- Definitions, K; Strike Management Areas
- Article 2.2; Move the second half of Article 2.2 to a separate bullet #2.4: "To the extent a Member determines...within the Basin."
- Article 2.4; Add language referring to member withdrawal to Article 2.4.
- Article 2.3; Remove reference to Water Budgets. Add language that the JPA will coordinate with other GSAs in the Subbasin.
- Article 3.4; Ms. Siprelle to provide language to Mr. Donlan regarding public outreach to be added to Article 3.4.
- Article 3.3; Add language that the JPA is a public entity separate and apart from the members.
- Article 3.5; No change, Ms. Siprelle said that it is okay to leave the GSA authorities details out of Article 3.5.
- Article 3.5; Delete "all powers commonly held by the Members..."
- Article 4.1; For CDMWC, change "member" to "representative." For the private pumpers, strike "members who are," so it says "Two private groundwater pumpers..."

- Article 4.2; Remove reference to two year terms and have it be at the pleasure of the individual agency.
- Article 3.9; Remove everything after the first sentence in Article 3.9.
- Action: 3.10 (b); Change the word “employ” to “contract with.”
- Article 4.1; Second to last bullet, remove: ... “(a) operate a production groundwater well that is not located within the boundaries of any of the above referenced entities, and (b)...” Add “upon recommendation of the Colusa County Groundwater Commission.” New language: Two members who are private groundwater pumpers, appointed by the County Board of Supervisors, who are members of the Colusa County Groundwater Commission, upon recommendation of the Colusa County Groundwater Commission.
- Article 4.7 (d); Strike “...related to the function of the Authority.”
- Article 4.7 (b); Replace “...property related...” with “...other...”
- Article 4.7 (f); Add language about termination of members.
- Article 6.1; Change the language to include a procedure to add new members.
- Article 4.9; Strike this Article, it is covered in 3.5 (c).
- Article 3.5 (c); Insert language that is similar to Article 4.9, provided that in the event of a conflict, and bylaws language.
- Article 5.1; Define the terms of Article 5.1; add language that the Agencies’ financing structure will be in place for two years, per County fiscal year (July 1-June 30). Add language that the Members will work under the Financing plan for two years, until a Proposition 218 can go into effect, or whichever comes first.
- Article 5.1; Strike the last sentence.
- Article 5; Leave in language that the JPA will finance the effort for two years, and delete Article 5.2.
- Article 5.3; Include Ms. Siprelle’s suggestion to address insurance in Article 5.3.
- Article 5.5; Change fiscal year to match the county (July 1-June 30)
- Article 5.11; Strike
- Article 5.12; Strike, this will be addressed in the Funding Agreement.
- Article 6; Add a dispute resolution process to a boiler plate Miscellaneous Provisions and cross reference it in Article 6.3.
- Articles 7 and 8; Combine Articles 7 & 8 and include any forward looking sustainability planning elements.
- Article 8.1; The role of the Authority needs to be updated to reflect Colusa County’s GSA.
- Articles 7 and 8; Mr. Donlan will go through the MOA and simplify sections 7 & 8 about what will be considered in the GSP.
- Article 3.5; Identify the County in reference to common powers in Article 3.5 and the GSA Workgroup will discuss further.

**Participant List**

➤ Kevin O’Brien (phone)	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
➤ Ann Siperell	BBK, representing the City of Williams
➤ Bill Vanderwaal	Reclamation District 108
➤ Denise Carter	Supervisor, County of Colusa
➤ Aaron Ferguson	Representing GCID
➤ Shelly Murphy	Colusa County Water District

**Staff**

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