

MEETING SUMMARY May 5, 2017

Colusa Sustainable Groundwater Management Act (SGMA) – Governance Workgroup Meeting #18

MEETING RECAP

- The Proposition 1 Proposal Solicitation Package (PSP) for GSP funding will be available very soon and it was suggested that a PSP subcommittee be formed including members from the Colusa and Glenn County GSA Workgroups.
- Final comments were provided by the Workgroup on the Joint Powers Agreement and Funding Agreement, and both were considered complete with edits from today's meeting.
- The group determined the public noticing process for agencies to ratify the JPA.
- The final Joint Powers Agreement, including all exhibits, and a model resolution will be provided to the Workgroup members next week for use at the public hearings.

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

➤ Opening Remarks

Dave Ceppos, facilitator from the Center for Collaborative Policy (CCP), Sacramento State University, welcomed meeting participants, introduced himself and provided an overview of the agenda. He noted that today's discussion would be the final discussion on the Joint Powers Agreement (JPA), and the last step prior to ratification. Today's handouts include the Joint Powers Agreement, a package of all of the exhibits to the JPA, information on public noticing, and the funding proposal and balance sheet.

Mr. Ceppos stated that it has been a pleasure and honor for him to work with the Colusa group, and he feels this group has done an extraordinary job and accomplished great work.

➤ SGMA Process Updates

Mr. Ceppos said that this group will be following up with the West Butte Subbasin to make sure there are no unmanaged areas.

Denise Carter, Colusa County Supervisor, mentioned a survey that is available online from the California Department of Water Resources (DWR) regarding facilitation services. Mary Randall, California Department of Water Resources, (DWR), said that she strongly encourages everyone to take the survey to provide feedback on the facilitation assistance provided by DWR so that DWR can better serve basins in the future.

Mr. Ceppos asked Ms. Randall if there were any updates on the Project Solicitation Package (PSP) for Proposition 1, GSP development grant program. Ms. Randall said the PSP is coming out soon. She could not give a specific date, but advised the group to watch their emails. Mr. Ceppos said he is hearing the following information regarding the PSP; there will be one proposal accepted per basin/subbasin; there will be a match requirement with a Disadvantaged Community (DAC) match reduction; there will likely be a priority for critically overdrafted basins because their GSPs are due two years earlier than other basins; there will be an allowance for matching funds, and everyone should try to put a value on their time spent towards this process because that value may be able to be used for match. Mr. Ceppos recommended that a PSP Subcommittee be formed with a few people from the Colusa GSA Workgroup and a few people from the Glenn Workgroup. Ms. Randall said that when considering salary for match, be sure to include all overhead.

➤ Focused Discussion – Proposed Funding Agreement Content; Budget Review

Mr. Ceppos turned the group's attention to **Exhibit E to the JPA, the Funding Agreement**. Mr. Donlan explained that the Funding Agreement was originally to be a stand-alone agreement to cover consultant and administrative costs only. It was later decided to fold the Funding Agreement into the JPA, and the document that was initially the Funding and Administrative Agreement will now be incorporated into the JPA as Exhibit E. The JPA budget will be incorporated as Exhibit F. The Funding Agreement covers up to two years until the Authority Board develops a funding structure. Exhibit E is identified in **Article 5.1** of the JPA. It makes sense to keep this as an exhibit, and at some point, hopefully sooner than later, it will be replaced by the Funding Plan that is adopted by the Authority Board. Mr. Donlan said that it is a simple Agreement. **Article 2** deals with the funding and identifies Exhibit A, the initial budget, and also identifies member responsibility for funding the budget. The Agreement identifies quarterly payments, which this group should discuss. There is an allowance for in-kind services but this is not how the County's administrative services contribution is set up. **Article 3.1** describes the Administrative Services process. **Article 3.2** addresses engagement of consultants which is a substantial component of the budget.

Mr. Ceppos asked if at the last meeting there was any discussion about how Glenn County is handling in-kind contributions, and the differences between their approach and Colusa's approach. Mr. Donlan said yes, this was discussed and there were substantial changes at the last Colusa meeting so that in-kind is being handled similarly to Glenn County, whereby the County will pay its share and invoice the JPA for Administrative services.

Mr. Ceppos asked the Workgroup if there were any immediate concerns with the Funding Agreement to discuss.

Comment: Mr. Bettner, Glenn Colusa Irrigation District, said that contributions to the JPA by the agencies is voluntary. As spelled out in the budget, every member may contribute, but we are not sure if each agency will follow through. There should be some sort of approval or agreement among the funding members that they agree how much to contribute and for what purposes. If some members decide not to contribute, are we going to reduce the budget or are other members going to pick up those costs? It should be a decision by the voluntary funders.

Mr. Ceppos asked Mr. Bettner for clarification and if he was asking that each member gets to decide what their contribution is used for. Mr. Bettner said no, that is not what he is saying. Some members may not contribute. Their boards may not approve to fund the JPA. To have board members on the JPA that have not contributed funds dictate to people that are paying does not work. What happens if there are agencies that do not contribute?

Mr. Ceppos asked Mr. Bettner if he was saying that only members making financial contributions should be allowed to make financial decisions. Mr. Bettner said that he feels that those members making payments should make the funding decisions.

Comment: Mr. Vanderwaal said that his understanding is that by signing the JPA, the agencies are committing to contributing funding.

Mr. Donlan said that the idea is that when the Boards approve the JPA, they are contractually committing to each other to fund their portion of the budget.

Question: Mr. Bettner asked if funding is voluntary or if it is a contractual agreement. **Answer:** Mr. Donlan said it's a contract. The idea is that you are all contributing. We don't spell out remedies if someone doesn't pay.

Mr. Ceppos said that **Article 2.1.3** in the Funding Agreement covers this: *"Each Member shall be responsible for funding a portion of said budget in accordance with the schedule set forth in Exhibit A...."* All signatories to the JPA are simultaneously signatories to the Funding Agreement.

Comment: Mr. Donlan pointed out that **Article 5.1** of the JPA states that members agree to provide their share of funding.

Comment: Mr. Bettner said that he is satisfied with that explanation.

Mr. Ceppos asked the members of the Budget Subcommittee, what happens if a member drops out? Mr. Vanderwaal said that the per-share cost would go up. Mr. Ceppos asked if there is necessary language in the JPA and/or Funding Agreement that acknowledges this scenario, that if someone drops out, costs go up.

Comment: Lewis Bair, Reclamation District 108, asked if we could include language in the Agreement that there is a stipulation for a circumstance where an agency is late with a payment. It would be better to address this now, rather than to wait until there is an issue.

Comment: John Garner, Princeton-Codora-Glenn and Provident Irrigation Districts, said that he does not see that an agency dropping out will derail the GSA. If someone decides they don't want to join, they either become their own GSA, or they go under the County and will eventually be assessed.

Mr. Ceppos asked Mr. Donlan if he feels the current agreement covers these concerns. Mr. Donlan said that the Agreement does not address what happens when a member doesn't make its payments. In the spreadsheet, some of the costs are fixed and some are dictated by a formula. The way the JPA is set up, when it is brought before the agency boards, it obligates the agency to pay their share under this Agreement. The budget numbers need to get before the boards now so they all agree to make these payments. If there is a default or delay in payment, then the Authority would need to evaluate what types of remedies it would need to pursue. This could fall under the dispute resolution process. If it gets too far along, the Authority would pursue a breach of contract.

Mr. Ceppos asked if we could we codify a remedy now for the scenario of someone being delinquent on their payment. Mr. Donlan said that in the Funding Agreement, **Article 2.1.3**, there is language about a 30-day delinquency.

Comment: Mr. Bettner said that his concern is that everyone needs to understand the process. Agencies have to approve the Agreement and make sure they have funding in place. The JPA is not finalized until everyone signs. He does not want to see the JPA get delayed if agency board members don't know that they have to pay. That understanding needs to be in place on the front end.

Mr. Ceppos said that we have expected that each agency has been keeping their governing bodies informed as this process has been developing. None of the Boards should be hearing this for the first time. Our working assumption has been that each entity has been informing their boards/councils.

Comment: Mr. Garner said that his boards are aware of costs. If a few agencies drop out and costs go up, that could be a problem. His agencies are comfortable with the current budget.

Mr. Ceppos said, under **Article 2.1.3 in the Funding Agreement**, there is a statement that beginning July 1, quarterly payments will be assessed. This means that by being signatory, each agency is committing to these payments. We advocated putting a funding agreement in this document so the agencies would have some clarification, but SGMA doesn't care about the Funding Agreement. It cares about having a legal GSA agreement in place by June 30 and that the basin has no unmanaged areas. If there is a presumption that someone does not sign, everyone else's contribution will go up. Perhaps that language in 2.1.3 needs to be struck. We need to ensure that by midnight of June 30, we have an agreement. We may not want the funding information in this document now, but might rather let the Authority Board work out the budget dependent on the final signatories. We shouldn't let the Funding Agreement be the factor that prohibits agencies from signing on.

Mr. Ceppos suggested adding language to the Funding Agreement that defines good standing related to voting structure; that is, that all members in good standing are allowed to vote. Mr. Donlan noted that adding language to the JPA about “good standing” could get very subjective. There are other aspects of good standing that are not related to funding. He suggested that it might be better to use language linking funding/payments to voting. In **Article 2.1.3 of the Funding Agreement**, there is delinquency language. We could add something like, members shall not be entitled to vote under Article 4 of the JPA if payments are more than 60 days delinquent, for example.

Comment: Aaron Ferguson, counsel to Glenn Colusa Irrigation District (GCID) agreed. Good standing is only relevant to this initial funding for the first two years.

Mr. Ceppos asked the group if any agency felt they would not be able to cut a check on July 1.

Ms. Carter said that it might take longer for cities and counties, they will need a tax I.D. number from the JPA.

Mr. Ceppos acknowledged that there are administrative steps to obtaining a tax I.D. number. Perhaps this could be addressed as part of the action of taking this to each board, i.e., that the Resolution includes approval of first payment.

Mr. Donlan said that **Article 2.1.5** covers this. He went on to say that the agencies all need to feel comfortable that payments will come in on different schedules. There are remedies in the Agreement. The accrual date is July 1 and the expectation is that member agencies will pay one quarter of their share within 30 days of July 1. There is an added penalty that if an agency is 60 days delinquent; that agency’s board member will not have the opportunity to vote. Mr. Donlan’s recommendation is that we don’t get into too much detail because it will be difficult to cover every scenario. This Agreement was drafted with the assumption that we are all cooperating and working on good faith.

Comment: Regarding **Section 6.2**, the removal provision, Mr. Ferguson said that it’s a process, but it’s an additional protection.

Mr. Ceppos said that the group will be covered if there is additional delinquency language added to **Article 2.1.3** in the Funding Agreement and a link is provided to **Article 4** in the JPA.

Question: Mr. Bettner asked if we could embed those actions in the Resolution. **Answer:** Mr. Donlan said yes, if we call out clearly that this is a commitment to the funding.

Action: Develop a Model Resolution that the agencies can use for their public hearings.

Comment: Ms. Randall, DWR, said there are issues with having a mutual water company sign the JPA. Mr. Donlan said we have heard about this being an issue. He has spoken with the State Water Resources Control Board (SWRCB) and they have assured him that in Colusa’s circumstance we will be okay. Ms. Randall asked if Mr. Donlan had this in writing and he said no. He will follow back up with SWRCB to get some communication in writing. The SWRCB was addressing in their memo situations occurring in the San Joaquin Valley where the County is not involved and the mutual water agency is the only entity covering its jurisdiction. In Colusa’s case, the County is lending its jurisdiction to the JPA including the lands of the mutual. This is authorized under the Joint Powers Act.

Mr. Ceppos asked if there were any other items in the Funding Agreement that need discussion.

Action: Ms. Fahey to provide a copy of the budget, with adjusted heading to reflect the correct date, to Mr. Donlan to include as an Exhibit F to the JPA, appended to the Funding Agreement.

➤ **Focused Discussion – Joint Powers Agreement Content**

Mr. Ceppos referred the group to the current draft of the Joint Powers Agreement, Final Draft, Version 7 with Exhibits, dated 5/4/17.

Question: Reclamation District 479 is not in attendance today and they were not in attendance at the last Workgroup meeting. Does anyone know about their intent to sign on?

Answer: Ms. Fahey said she has contacted them and they have not gotten back to her. Jim Wallace, Colusa Drain Mutual Water Company, is a member of the RD 479 board and he stated that the acreage number on the proposed budget looks correct and they have had this discussion at their board meetings and he believes they are still committed to sign on.

There was discussion about the acreages designated to each agency in the budget. There are some questions as to the accuracy of many of the acreages due to conflicting GIS files. Shelly Murphy, Colusa County Water District, said that she would like her district's acreages updated due to pending de-annexations in the Colusa County Water District service area.

Mr. Ceppos asked if we need to set a meeting to go over the acreages or if this group could determine that this issue will be resolved when the Authority Board is seated, and state in the Funding Agreement that these numbers will be subject to confirmation.

Comment: Mr. Wallace clarified that the agencies would commit for the dollars in the current budget, but as we go forward as a group we will fine-tune these numbers and get them more exact.

Comment: The City contribution is based on population, not acreage.

Comment: This is just to get us started and if everyone agrees for year one, we can move forward.

Action: *Leave language and budget as-is and any trueing up will happen after the Authority is formed.*

Question: Ms. Murphy asked if they are doubly covered (overlapping agencies), could we fix that now, if she can get the information in the next couple of days?

Comment: Can we have a map of all of the agencies?

Action: *Provide a map of the Agencies as an Exhibit to the JPA, along with Exhibit B, a map of the Basin.*

Comment: Mr. Ferguson said, regarding amendments and termination; termination should be by unanimous vote. Amendments should require a two-thirds vote.

Mr. Donlan said that we made the change on termination already. Regarding amendments, typically, this would be taken back to the Boards. Mr. Bettner said that GCID prefers that amendments require only two-thirds of the governing boards of the members.

Action: *Article 8.1, change to 2/3rds of the Members (each agencies' boards), not 2/3rds of the Authority Board.*

Comment: Mr. Vanderwaal said, with the change to Article 8.1, we need to make a change to exclude terminating withdrawal rights. Terminating these rights needs to be by unanimous vote.

Action: *Article 8.1: The Agreement may be amended from time to time by a two-thirds vote of the Members; except that a unanimous vote of the members shall be required to amend Article 6.4, the right to withdraw. The only unanimous vote is to change the withdrawal right.*

Mr. Donlan proceeded to go through the document from the beginning and call out the most recent changes:

- West Butte Subbasin has been added
- Article 2.1: language changes to better characterize the MOA as a general unexecuted MOA among the members and stakeholders that sets forth principles, removed signature blocks
- Articles 2.4 and 3.4, added language about the approval process
- Article 3.6, incorporates SGMA's authorities as the GSA's authorities and they have been included as an Exhibit
- Article 4.1a, Board of Directors reflecting step-in rights and this is not considered an amendment
- Article 4.1b, provides for alternates
- Article 4, Term of Directors is at the pleasure of the appointee
- Article 4.7, Actions have been expanded
- Article 6, is new, provides step-in rights
- Dispute Resolution was left broad for the Board of the Authority to develop

Mr. Ceppos asked that with those adjustments is there any further work to be done? There were no other changes.

Mr. Donlan said he will incorporate the editorial changes from today, and get the maps and budget from Ms. Fahey. He will clean it up the document, add all exhibits, and provide the finalized JPA as a pdf to the group. A Model Resolution will be developed.

Question: Mr. Bettner asked how this will relate to the process in Glenn County.

Mr. Ceppos said he is talking with them this afternoon to determine if they have these things pinned down. He will take today's Colusa conversation to Glenn. The most substantial difference between the two Agreements is the inclusion of private pumpers in Colusa.

Glenn is working on their funding, and working off of the Funding Agreement that Mr. Donlan has developed for Colusa. They are still waiting on a workplan to get costs for projects to include in their budget.

➤ **GSA Ratification and Public Outreach Requirements**

Ms. Fahey presented a proposed schedule for public hearings based on each agency's regular Board meeting schedule. Each agency will need to provide a public notice and set a public hearing to approve the JPA and adopt the Resolution of intent.

Comment: Mr. Bair said it is expensive to publish individual public notices and asked if we could provide one public notice listing all of the public hearings.

Mr. Donlan will look into the legalities of providing one joint public notice.

Mr. Donlan said that many agencies are going through the process of having individual agency public hearings and then once the JPA is ratified, the GSA is going through that public hearing process as well, as long as there is enough time to get it done before June 30. Referring to **Articles 2.4 and 3.4**, Mr. Donlan said that these articles say that by signing the JPA each agency is delegating to the GSA the authority to file the necessary paperwork, so we are covered if there is not enough time to hold a GSA public hearing. We can evaluate after the last signing if there is time before June 30.

Comment: Mr. Ferguson said that he can help Mr. Donlan draft the Model Resolution, and that it will be important that the language in **Articles 2.4 and 3.4** is consistent.

Question: Ms. Fahey asked if each agency will hold their public hearing at their regularly scheduled board meeting, or if any will be holding a special meeting.

Comment: Mr. Bettner said that GCID will take action on both the Colusa and Glenn County JPAs at the same meeting, so they will have to wait on Glenn County to determine the timing. They may have to schedule a special meeting.

Action: Ms. Fahey will follow up with each agency on their meeting dates, times and locations and get the notice in the paper.

Action: Mr. Donlan will have the finalized JPA and a model resolution early next week.

Comment: Mr. Ferguson suggested that rescinding GSA status should be part of the Resolution.

Action: Any last comments on the JPA must be to Mr. Donlan by Monday. This will be the final iteration.

To wrap up the meeting, Ms. Carter presented Mr. Ceppos with a goody bag of Colusa County agricultural products and thanked him on behalf of Colusa County for all of his great work.

Action Items from This Meeting:

- Mr. Ferguson to work with Mr. Donlan to develop a Model Resolution that the agencies can use for their public hearings.
- Leave language and budget as-is and any trueing up will happen after the Authority is formed.
- Provide a map of the Agencies as an Exhibit to the JPA, along with Exhibit B, a map of the Basin.
- Article 8.1, regarding amendments to the JPA, change to two-thirds of the Members (each agencies’ boards), not two-thirds of the Authority Board.
- Article 8.1: Change language to something similar to: “The Agreement may be amended from time to time by a two-thirds vote of the Members; except that a unanimous vote of the members shall be required to amend Article 6.4, the right to withdraw.” The only unanimous vote is to change the withdrawal right.
- Ms. Fahey will follow up with each agency on public hearing meeting dates, times and locations and get the notice in the paper.
- Mr. Donlan will have the finalized JPA and a model resolution early next week.

For copies of all meeting materials, visit the [Colusa County Water Resources Webpage](#).

Participant List

GSA Workgroup Members	
➤ John Garner	Princeton- Codora-Glenn and Provident Irrigation Districts
➤ Chuck Bergson	City of Williams
➤ Denise Carter	Colusa County Supervisor
➤ Bill Vanderwaal	Reclamation District 108
➤ Lewis Bair	Reclamation District 108
➤ Thad Bettner	Glenn Colusa Irrigation District
➤ Aaron Ferguson	Counsel representing Glenn Colusa Irrigation District
➤ Shelly Murphy	Colusa County Water District
➤ Jim Wallace	Colusa Drain Mutual Water Company
➤ Jesse Cain	City of Colusa
➤ Dan Ruiz	Maxwell and Westside Irrigation Districts
➤ Darrin Williams	Private Pumper Representative
➤ Rob Donlan	Ellison, Harris, Scheider and Donlan, LLP; consulting attorney
Members of the Public	
➤ Greg Plucker	Colusa County

➤ Mary Randall	California Department of Water Resources
➤ Hilary Reinhard	Provost and Prichard, RD 108 Board, Private Pumper
➤ Brian Pearson	Williams Pioneer Review
➤	

Staff

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