

MEETING SUMMARY April 21, 2017

Colusa Sustainable Groundwater Management Act (SGMA) – Governance Workgroup Meeting #17

MEETING RECAP

- The Workgroup reviewed and discussed the latest version (Version 5) of the Colusa Joint Powers Agreement (JPA), with comments included from the previous Groundwater Sustainability Agency (GSA) Workgroup meeting and Legal Review Subcommittee meeting.
- Workgroup members clarified some of the lingering policy-related questions in the JPA and provided feedback to Mr. Donlan to include in the next version of the document.
- The Proposition 218/Budget Subcommittee will meet next week to finalize the draft budget while Mr. Donlan works on updating the JPA and the Funding Agreement for final review at the next GSA Workgroup meeting.

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

Ms. Fahey announced that Mr. Ceppos could not attend today's meeting and that she would lead the group through the agenda, while Mr. Donlan, legal counsel, would lead the discussion and answer questions regarding the pending policy issues in the Joint Powers Agreement (JPA).

➤ SGMA Process Updates

Ms. Fahey provided information from the California Department of Water Resources (DWR) on the proposed timing for upcoming Basin Boundary Modification requests:

- July 1, 2017: Initial notification period opens
- January 1, 2018: Submission period opens
- March 31, 2018: Submission period closes and 30-day public comment period opens
- April 1, 2018: Public comment period closes
- Approx. July, 2018: Draft Basin Boundary Modifications released
- Approx. August, 2018: Final Basin Boundary Modifications released

➤ Focused Discussion – Joint Powers Agreement Content

Ms. Fahey turned the Workgroup's attention to the latest draft version of the Colusa Groundwater Authority's Joint Powers Agreement (JPA), Version 5.

Beginning with **Article 3.6: Powers of the Authority**, Mr. Donlan explained that this is a requirement of the Joint Powers Act. The language is the same as in the Yolo and Glenn JPAs. There needs to be a finding on the limitations of authorities. This is a legal requirement but not something to get hung up on. This would carry over until the Authority developed by-laws.

Question: What does this (Article 3.6) mean? **Answer:** It means you would employ the procedures of one entity, in this case the County.

Question: For example, would this mean that if the Authority needed to hire a consultant, we would use the County's procedure? **Answer:** Yes.

Question: Is the County's procedure more stringent than water districts'? **Answer:** No, water districts are often more restrictive.

Question: Would there be an issue if we were doing a basin-wide study and Glenn County has a different procedure? **Answer:** Potentially, but I'm not sure.

Action: Leave Article 3.6 as-is.

Article 3.7.a: Question: Why is this deleted? **Answer:** It has been moved to 3.7.c.

Article 3.5: Powers of the Authority; Mr. Donlan mentioned that one attorney had wanted more detail regarding the powers that SGMA conveys to GSAs. Those powers are all located in Chapter 5 of the Water Code, and it is quite an extensive list. We can either include these in the JPA text, or provide a reference to the Water Code, or provide the detail in an Exhibit to the JPA.

Action: It was decided to add this detail as an Exhibit to the JPA.

Article 3.10: Ms. Fahey explained that the recommendation from the Proposition 218/Budget Subcommittee was to have the County contribute staff for at least the first two years as the JPA is getting on its feet. We need agreement from the group and discussion on how that contribution will be handled by the County and what the correct procedure would be. The recommendation is for the County to contribute staff and overhead as their contribution, in lieu of cash, at least for the first year, and probably the first two years.

Comment: Denise Carter, Colusa County Supervisor, said that if the JPA were to go out and hire someone, it would cost quite a bit more and the group would lose continuity. The recommendation is for the County to provide staff as their contribution.

Question: Would it be the County's intent to offset the costshare contribution of three seats (Board of Supervisors and two Private Pumper seats) with staff? **Answer:** Yes

Comment: Mr. Wallace, Colusa Drain Mutual Water Company, said that in Glenn County they are developing a "cost center" in which all agencies contribute funds, and any agency that supplies services to the JPA would invoice the JPA and receive payment for those services, pending Board approval. This would be his preference. In that case, the County would submit an invoice for services rendered.

Discussion was held about the two scenarios. Some felt that, although the "cost center" method is more complicated, there is more oversight.

Mr. Donlan said that it is easier structurally to know fixed costs ahead of time and make them a line item in the budget, as the Budget Subcommittee is suggesting.

Mr. Wallace said he prefers the "cost center" scenario.

Comment: Mr. Garner, Princeton and Provident Irrigation Districts, said that there is more transparency with the "cost center" scenario, but having Project Management as the County's cost share would be easier for the first two years as the JPA is getting up and running, and after the first two years, an invoicing scenario could be set up.

Mr. Donlan mentioned that the initial Funding Agreement will cover just the first two years or less. He asked if the group would accept in-kind contributions, mentioning that this is a policy issue that needs to be decided.

The group agreed that Article 3.10 is fine as written, but there was more discussion regarding utilizing County staff.

Mr. Donlan clarified that previously the group was talking about having Ms. Fahey, as County Staff, serve as Program Manager for the JPA. She would remain an employee of the County. The County would provide staff as

their contribution. This is the model the group has been working on. It's similar to the "cost center" scenario but you wouldn't get into the exercise of issuing invoices. It would be simpler.

Comment: Mr. Garner said that his Districts would like to see transparency in the accounting. They understand that initially we want to keep it as simple as possible, but down the road, the trouble with in-kind of anything is that it can get out of control and the Authority Board may not have the opportunity to approve work. They would like to have the oversight to make sure there are no excessive charges. For the first two years, in-kind for Administration is fine, but down the road there needs to be more control over the budget. It's pretty straightforward for the next two years, but will get more complicated.

Mr. Donlan mentioned again that the Funding Agreement is for the first two years or less. That's all we're talking about for this.

Comment: Mr. Bergson, City of Williams, said he thinks it's cleaner to have invoicing for services.

Comment: Mr. Wallace said if the County wants to write a check and the JPA writes a check back to them, that's fine. The JPA should retain the authority to approve or not approve services once that Board is formed.

Comment/Question: Mr. Bettner, GCID, said that his District is trying to get the Colusa and Glenn documents to be as identical as possible. Is there a way to say that Administration will be reimbursed, but by agreement? Can we allow for provisions?

Question: Didn't they decide in Glenn County that any agency can invoice the JPA, or is it just the County that can invoice the JPA? **Answer:** Glenn County decided that any agency can invoice the JPA for services.

Comment: Mr. Wallace said he believes that in Glenn County they are not going to allow in-kind, they are going to expect an invoice for all services. That is what he is asking for. The Board will decide what is acceptable. What the current Colusa draft budget shows is the County providing \$150,000 in in-kind services for staff. It is 20% of the budget and he does not want that.

Ms. Fahey explained the Budget Subcommittee's recommendation to have the County supply Administrative Services at an estimated value of \$150,000. This number includes all overhead, printing, copies, etc. Ms. Fahey said that if we set it up that way, as in-kind, she could still work with the Auditor to develop monthly or quarterly reports itemizing time and expenses to provide to the JPA for documentation. She asked would it help to have that documentation if we set it up as in-kind contribution for the County's share valued at \$150,000?

Comment: Mr. Wallace replied that having that documentation is better but his first choice is that the County writes a check to the JPA and the JPA disburses costs however they decide they want that disbursement procedure to be. It could be one lump sum check to the County, or based on quarterly or monthly invoicing, but there is an agreement that the County agrees to fund the three seats. (1 Board of Supervisor and 2 Private Pumper seats). The County would pay the same way that every other member of the JPA pays. Once the initial payments are received, the JPA can start to pay vendors and the first vendor would be the County for Administrative services. This will leave a cleaner process. There won't be any question about what the County paid and what the County provides.

Comment: Mr. Garner said it wouldn't have to be a monthly payment, depending on the cash flow of the JPA. It would be done through more of a transparent process.

Comment: We have not considered anyone else's in-kind services in the budget. This could be a problem. Every agency is contributing something. To keep track of that and bill it, it could be a problem, to cover everyone's time.

Comment: The way it was described, the Board would say no if a service wasn't already accounted for in the budget. All budgeted items should be set in the beginning of the year.

Comment: Anyone doing in-kind work should check with the Board before doing that work. Regarding reimbursement, this is a different topic.

Comment: It would be good to have the flexibility to be able to both invoice for actual time and accommodate in-kind contributions. Can we say it's one way (say invoicing), but also that there's flexibility to be able to do this through an in-kind process? To have the flexibility to go either way is better than one way or the other. From the budget standpoint, we know that there are efficiencies to having the County continue to supply administration through in-kind services, but after we get into the Proposition 218, we get into something different. It would be good to have that flexibility.

Mr. Donlan said that **Article 3.10** doesn't dictate the financing details. **Article 5** deals with financial provisions broken into two parts; the initial contributions, and expenses that will be governed by the Funding Agreement, limited to two years or less. The Authority could in the future decide it wants to hire staff. There is nothing in the Funding Agreement that restricts that. It is intended to efficiently identify the work that needs to get done over the next two years, a budget that covers that, and then to deal with the staffing issue. The more complicated we get with handling invoicing, reimbursement, handling of finances, the more time and expense is involved. There's a lot to think about for handling this long term, but for the initial funding, the Funding Agreement will cover this. Legally there is nothing prohibiting a month over month reimbursement. It would just be more burdensome. **Article 3.10** states that the JPA can hire staff. This policy direction will be in the Funding Agreement.

Comment: Ms. Murphy, Colusa County Water District, said the dollar amounts for the County are all in-kind. We are not comfortable with this. Our landowners are being taxed twice. The white areas and private pumpers are not paying anything. You also have in this document that no one will be reimbursed for those two years. Those are concerns of the Boards.

Mr. Donlan said that **Article 5.2a** says members "may" get reimbursement. This is something to be worked out in the future.

Question: Will the Funding Agreement cover most of this? Doesn't the JPA have enough flexibility in it and won't the Funding Agreement get into details of reimbursement, in-kind, etc.? **Answer:** Mr. Donlan said yes. The Funding Agreement will cover the first two years and the JPA will decide on long term issues. All we are talking about now is in-kind and reimbursement issues for the first two years, and not locking in anything that would be prescriptive for this Board in the future. It's important to keep in mind that we are not talking about the long-term functioning of the Authority.

Comment: Ms. Murphy said she is thinking more of an itemized bill, not a lump sum check.

Comment: Invoicing could be quarterly or every six months.

Comment/Question: Ms. Fahey summarized that the group would like the County to write a check for their share, and invoice quarterly or on another regular schedule, to get paid back for providing Administrative services. She mentioned that when the Budget Subcommittee was working up the original draft budget, with the County pitching in the same as the other Agencies, the cost to the County was just over \$127,000. The estimated cost for Administration is \$150,000, which then was considered the County's contribution as in-kind in the budget to offset Administration. Is the County now going to contribute \$150,000 cash, or will it go back to paying the fixed fee rate plus percentage based on acreage (approximately \$127,000)? **Answer: Action: The County will contribute the fixed fee plus their percentage like everyone else.**

Comment: Ms. Murphy mentioned that the assessed acreage is wrong for CCWD.

Action: We need to confirm acreage from all Agencies and get accurate shapefiles over to Ms. Fahey.

Action: Mr. Donlan clarified the decisions, regarding the Funding Agreement; the JPA will contract with the County to provide services with an assumed budget and monthly invoicing. Any other in-kind work would be subject to approval in advance by the Authority Board.

Article 4: Ms. Fahey said that there has been discussion on whether elected officials will serve on the JPA Board, and whether there will be alternates. At the last meeting it was decided to have Directors (i.e, board or council members) on the Board. In Glenn County they wanted more flexibility. The Colusa group needs to revisit this and decide if it wants that same flexibility. Currently it is written in Article 4 that board or city council members will serve on the JPA Board.

Comment: Mr. Wallace explained that where it ended up in Glenn County is that all of the GSA member agencies preferred to retain maximum flexibility as to who serves on the GSA Board. Mr. Wallace said that Mr. Ceppos' recommendation was that whoever shows up better be prepared to participate in discussions and voting because the group is not going to slow down and wait for a member to catch up.

Question: What about FPPC requirements, and will GSA Board alternates also have to file Form 700s? **Answer:** Mr. Donlan said yes, and there is potentially an issue there. He suggested that there is a minimum threshold for alternates, either another Director or Executive staff. It should be a policy-level person that is qualified to vote.

Comment: We should leave it up to the discretion of each member agency. The alternate needs to be specifically designated.

Comment: Can we include language that each member notifies in writing who their designated representative and alternate are, and that there is only one alternate?

Action: Leave Article 4 as-is with Board or Council members, and add one designated alternate.

Action: Remove last sentence of Article 4.1.

Article 4.7: Supermajority Vote

Ms. Fahey explained that Glenn County agreed to add the bulleted items in the sidebar comment under Supermajority Vote, with the exception of *Adoption of Ordinances* which is already included.

Question: Article 4.7(d), Does this mean there could be a supermajority vote to remove the right of an agency to withdraw from the JPA? It should be a unanimous vote to change that. The right of an agency to withdraw from the JPA should be an exception to the Supermajority vote. **Answer:** Mr. Donlan said it wasn't his thought that these procedures would apply at all to the rights of each member to withdraw at any time. There is no vote on that. He didn't want there to be any limitation that the rest of group could vote to preclude an agency to withdraw.

Question: When the Authority appoints the Mutual Water Company Member, will that go through a vote?

Answer: Mr. Donlan said the intent is that the mutual water company will be a member so they will sign the JPA. They can participate as a Mutual Water Company Member through the JPA. A mutual can be a signatory with a Joint Powers Authority. The intent in Colusa County is that Colusa Drain Mutual Water Company (CDMWC) will have equal standing with the other members. There's a question about whether the ultimate appointment needs to be by a public agency. Originally we had the County appointing CDMWC. We need to keep the ultimate appointing authority either with the Authority or with the County. On page 7, it states that CDMWC will be appointed by the Authority.

Action: Article 4 - change language: "Proposed by the Colusa Drain Mutual Water Company which will be appointed by the Authority."

Mr. Donlan said that CDMWC is the only member that won't have a seat at the first meeting, because the Authority must be formed first before they can appoint them. (The Private Pumper seats will be appointed by the County.)

Action: It was agreed to add the bulleted items minus Adoption of Ordinances to Article 4.7.

Mr. Donlan mentioned that this JPA will have a quorum of 50% of the members. A supermajority would be maybe one more member. The difference between majority and supermajority won't be that different depending on the size of this board, maybe one or two seats. A supermajority is 2/3rds of the members.

Question: Does the Authority have the right to amend the JPA? **Answer:** No, the Member agencies, the signatories. **Question:** That is the members of the JPA Board, right? **Answer:** No, every members' boards must agree in order to change the Agreement. So, the Board of Supervisors, the CCWD Board and all of the other agency Boards have to vote and agree.

Comment: It can be changed, but it is not an easy process.

Comment: In Yolo County it is a Supermajority vote to amend the Agreement.

Mr. Donlan said we can do that here. It would be in a separate section at the end.

Mr. Donlan said that adding a new member would fall under an amendment. It could take six months or more to get approval and get the amendment completed. The 2/3rds requirement would make it more official. Is it the thinking of this group that a 2/3rds vote would work for an amendment to the Agreement?

Article 8.1 States that the Agreement may be amended by a unanimous vote of the Members.

Action: After much discussion, it was determined to leave Article 8.1 as-is.

Action Article 4.10 – All agreed on the County as Administrator and Keeper of Records.

Question: Is this related to the required Single Point of Contact? Will the County be that contact? **Answer:** That is different. The Authority will make that decision. DWR requires one point of contact per basin, so we will need to coordinate with Glenn and Butte Counties.

Action: Article 5.7 – All agreed on the County as the Depository, tied to the two-year funding agreement.

Comment: There should be a member of the Board that has oversight on the books, some checks and balances.

Article 6.1: Changes to Membership

Mr. Donlan mentioned that this is a huge policy issue. The process for terminating a member is well laid out. The step-in rights are not clear. The MOA implies that any new entity that forms after finalizing this Agreement would have a right to become a member. It is unclear about pre-existing agencies. Also, if a new member joins, does it amend the Agreement? Is there a procedure to include new members?

Comment: This process should be as lenient as possible.

Ms. Fahey mentioned that this group has said they would take on any interested members in the future whether pre-existing or newly-formed agencies.

Comment: There is the question about funding by the original members, and how those members contribute.

Comment: The work has already been funded and done, we need to leave that behind. We have all made commitments. When we look forward, it will be a better GSA if it is inclusive and we don't consider their past sins.

Comment: There has to be some way that new members pick up some of the burden going forward. There needs to be some language that they share all liabilities when they join.

Mr. Donlan said that the act of bringing on a new member amends the JPA, so there needs to be a stipulation. Do you want to include conditions, such as; new members must provide funding, must be qualified, must accept the JPA, etc.? We also need to exclude step-in rights from a unanimous vote. It is a right. We need to include conditions and if they abide, they have the right to join.

Question: Would it go to the Board to decide on who joins? **Answer:** That is inconsistent to the policy to let anyone join, as I understand it.

Comment: We could have a window of time to accept new members.

Mr. Donlan said he could make it a ratification process so timing is not delayed.

Action: *Mr. Donlan to draft language, Budget Subcommittee to work up what the buy-in will be. Conditions will be included - they must be qualified, they must agree to the JPA as written, they must agree to buy-in of proportional share of the liabilities as determined by the Authority.*

Question: Does this apply to mutual water companies? **Answer:** They are not qualified.

Question: Could they be invited? **Answer:** You could allow them to come in.

Comment: CDMWC could cover the mutuals since they are so large.

Article 6.2: Mr. Donlan explained that a dispute resolution concept is built in here. Mr. Ceppos has provided some language. This is a policy call. Mr. Donlan has simple dispute resolution language in **Article 8.6**. Mr. Ceppos' language is more detailed.

Question: Is the dispute resolution a private or a public process? **Answer:** It would depend on the circumstances.

Action: *Mr. Donlan to include Mr. Ceppos' dispute resolution language in Article 8.6 and include alternative language as options for review. Attorneys will review the proposed options.*

Article 7: Mr. Donlan explained that this Article combined the original Article 7 and Article 8.

Comment: Ms. Carter said she got a request to include language in support of the proposed Sites Reservoir project in the JPA and this would be a good place.

Ms. Fahey mentioned that this came up during development of the MOA and it was determined to remove reference to Sites Reservoir because the project is currently concept-only.

Action: *It was decided that the Authority, once formed, could provide a letter of support for Sites Reservoir.*

Mr. Donlan summarized some of the discussion from today;

- Regarding amendments the group does not want to amend the unanimous voting requirement.
- The addition of new members is an amendment but it will be more of a ratification so the new member could participate right away. The ministerial approval of the amendment would happen on the back end.

- Will add Mr. Ceppos’ proposed dispute resolution language as an alternative to 8.6.
- Regarding signature blocks, currently in the case of Maxwell Irrigation District and Westside Water District, they are sharing one seat but both agencies are signatories and members, and both are contributing fees separately. It is the same for Princeton-Codora-Glenn Irrigation District and Provident Irrigation District. **Comment:** Mr. Ruiz, Maxwell and Westside, said that so far his board is fine with that arrangement, but they need to see the budget.

Action: The Proposition 218/Budget Subcommittee will meet next week to finalize the budget.

Comment: Mr. Bergson, City of Williams, said that he needs to get these documents before his Council.

Comment: Ms. Fahey mentioned that we are 10 weeks out from June 30 and time is of the essence now.

Comment: Mr. Vanderwaal said that we have about a one month window to finalize and get approval and sign-off on the Agreement. There is a need to get the JPA finalized by May 15 so the various Boards can start approving it. Everyone needs to get this document before their legal counsel and the agency representatives that aren’t here today need to be contacted.

Comment: Ms. Fahey said that in Yolo County, each agency that will be part of the Authority will have to publically notice for two weeks in the paper, hold their public hearing to adopt the JPA, and sign a resolution to adopt the JPA. It’s another minimum 3-week process.

Before wrapping up, Mr. Bettner provided an overview of the draft budget and background on how it was developed by the Proposition 218/Budget Subcommittee.

Action Items from This Meeting (Not Regarding the JPA Content):

- Ms. Fahey to reschedule the next GSA Workgroup meeting – May 12, the scheduled date, is the ACWA Conference and many members will be attending the conference.
- The Budget Subcommittee will meet next week to finalize the budget. Ms. Fahey to include Ms. Murphy and Mr. Ruiz on the meeting notification as they would like to join the Budget Subcommittee.
- Mr. Donlan will provide Version 6 of the JPA next week, which will have the items from today’s discussion incorporated.
- Mr. Donlan will provide a draft Funding Agreement next week.
- The MOA will be cleaned up and added as an exhibit to the JPA
- Ms. Fahey will ensure that the members that did not attend today’s meeting get copies of all relevant documents
- Members should work to confirm their agency’s acreages and provide accurate shapefiles to Ms. Fahey if available.

Action Items from This Meeting Regarding the JPA Content

- Article 3.5: Powers of the Authority – Provide text from the Statute as an Exhibit to the JPA
- Article 3.6: Designation of power of the Authority - OK as-is with the County designated. This will carry through until by-laws are developed.
- Article 4.1: Board of Directors –
 1. Leave Article 4 as-is with Board or Council members, and add one designated alternate (Members will be Directors, and each seat will be allowed an alternate.
 2. Princeton/Provident – there will be one seat but both agencies will sign and be members
 3. Maxwell/Westside– there will be one seat but both agencies will sign and be members
- Article 4.1: Board of Directors – amend language for Colusa Drain Mutual Water Company to, “...proposed by the Colusa Drain Mutual Water Company ~~and~~ **which will be** appointed...”
- Article 4.1: Board of Directors – Need to better clarify the noticing procedure for agencies notifying the Authority in writing of their designees.

- Article 4: Change language: “Proposed by the Colusa Drain Mutual Water Company which will be appointed by the Authority.”
- Article 4.1: Remove last sentence: “The Board may in the future...of such alternates.”
- Article 4.7: Supermajority Vote Requirement – Add the suggested bulleted items, minus the Adoption of Ordinances.
- Article 4.10: Administrator – The County will serve as Administrator and Keeper of Records. There should be a contract developed.
- Article 5.7: Depository – There needs to be checks and balances. Tie this to the Funding Agreement
- Article 6.1: Changes to Membership – Need more clarity, re: funding, exclude from unanimous vote, ratification process to avoid delays, proportionate share language (already in here). Mr. Donlan to draft language, Budget Subcommittee to work up what the buy-in will be. Conditions will be included - they must be qualified, they must agree to the JPA as written, they must agree to buy-in of proportional share of the liabilities as determined by the Authority.
- Article 8.6: Dispute Resolution – refer to agency counsels if they want to add dispute resolution language here to replace current language. Rob to add alternative language as options to review.
- Funding Agreement: The County will contribute the fixed fee plus their percentage, same as the other agencies. The JPA will contract with the County to provide services with an assumed budget and monthly invoicing. Any other in-kind work would be subject to approval in advance by the Authority Board.

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
➤ Thad Bettner	Glenn Colusa Irrigation District
➤ Shelly Murphy	Colusa County Water District
➤ Jim Wallace	Colusa Drain Mutual Water Company
➤ Dan Ruiz	Maxwell and Westside Irrigation Districts
Members not present: City of Colusa, RD 479, Private Pumpers	
Members of the Public	
➤ Greg Plucker	Colusa County
➤ Derrick Strain	PPAC
➤ Kim Gallagher	PPAC
➤ Vann Brothers Rep.	Private Pumpers
➤ Kristin Sicke	Yolo County

Staff

- Mary Fahey Colusa County Water Resources Manager

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- Rob Donlan Ellison, Schneider, Harris, and Donlan, LLP