

Staff Report for August 14, 2019: ESJ GWA Advisory Committee Meeting

Agenda Item #5: Draft GSP Comment Incorporation Process and Agenda Item #6: GSP Adoption Procedures.

Prepared by O'Laughlin & Paris LLP; reviewed by Neumiller & Beardslee

Submitted by Woodard & Curran

Meeting Agenda

1. **Approval of July 10 Minutes** (No accompanying staff report)
 2. **Outreach Update** (No accompanying staff report)
 3. **Ad-Hoc Committee Recommendation and Input** (No accompanying staff report)
 4. **Proposition 68 Grant Application** (No accompanying staff report)
 5. **Draft GSP Comment Incorporation Process**
 6. **GSP Adoption Procedures**
 7. **Staff Administration for GWA for Implementation** (No accompanying staff report)
 8. **Interbasin Coordination Summary** (No accompanying staff report)
 9. **September Agenda Items** (No accompanying staff report)
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Agenda Item #5: Draft GSP Comment Incorporation Process

ISSUE SUMMARY

The Sustainable Groundwater Management Act (SGMA) places tremendous importance on community engagement throughout the creation of a groundwater sustainability plan (GSP). SGMA requires a groundwater sustainability agency (GSA) encourage the active involvement of diverse social, cultural, and economic elements of the population within the groundwater basin prior to and during the development and implementation of the GSP. (Wat. Code, §10727.8(a).) SGMA requires each GSP include a summary of the notification and communication the GSA provided to agencies and interested parties. (23 CCR § 354.10.) The summary must include comments on the GSP and a summary of responses provided by the GSA. (23 CCR §354.10(c).) In reviewing the adequacy of the GSP, the Department of Water Resources (DWR) will consider whether an agency has adequately responded to the comments which raise credible technical or policy issues within a plan during its review of a GSP. (23 CCR §355.4(b)(10).)

In the DWR Guidance Document for the Sustainable Management of Groundwater Sustainability Plan (GSP) Annotated Outline published in December 2016, DWR interpreted the requirements above to recommend the GSP contain an appendix of comments received and responses thereto. (DWR Guidance Document for the Sustainable Management of Groundwater Sustainability Plan Annotated Outline, at 10.)

In order to comply with the above requirements and DWR recommendations, the GWA will need to review the GSP comments and determine how to appropriately respond, and if a response is necessary. The GWA published the draft GSP on July 10, 2019 for a public comment period of 45 days ending on August 25, 2019. The GWA instructed the public to provide comments electronically to info@esjgroundwater.org and requested comments be submitted on a template provided on the website.

QUESTIONS FOR CONSIDERATION:

1. How should the GWA process and review GSP comments to comply with SGMA and DWR recommendations?
2. What are the protocols for member agencies of the GWA if a member agency receives comments related to the GSP?

CONSULTANT RECOMMENDATION

- Provide the GWA members access to comments through a shared FTP location to ensure each individual GSA can individually access and review GSP comments.
- The GWA Board may appoint a temporary, ad hoc committee that is open to staff members from each member without causing a quorum issue of the advisory committee or GWA Board. The comment review ad hoc committee would convene for one meeting, spanning over a period of days, to review the comments, summarize the comments, and provide recommendations to the Advisory Committee regarding responses to comments and potential changes to the GSP. After the comment review ad hoc committee completes the task of reviewing the comments and providing recommendations to the Advisory Committee, the ad hoc committee will disband.
- Adopt a protocol that requires each GWA member agency forward any GSP comments it receives to the consultant within 3 business days of receipt. The consultant will post comments to the shared database to allow all GWA members access to the comments.

ADVISORY COMMITTEE RECOMMENDATION

Advisory Committee to consider on August 14, 2019

BOARD RECOMMENDATION

Board to consider on September 11, 2019

Agenda Item #6: GSP Adoption Procedures

The Sustainable Groundwater Management Act (SGMA) expressly allows a groundwater sustainability agency (GSA) to adopt a Groundwater Sustainability Plan (GSP). (Water Code, § 10728.4.) The Eastern San Joaquin Groundwater Authority (GWA) was formed through a joint powers agreement (Agreement) which is not a GSA and does not expressly discuss which party(ies) will adopt the GSP. SGMA is silent with regard to whether a joint powers authority (JPA) or any other entity may adopt a GSP.

Question

Should the GWA adopt the GSP on behalf of its members or should each GSA member adopt the GSP separately?

SGMA Direction on Adoption

Water Code section 10728.4 controls the adoption of a GSP. This section provides: “A groundwater sustainability agency may adopt or amend a groundwater sustainability plan after a public hearing, held at least 90 days after providing notice to a city or county within the area of the proposed plan or amendment.” This language is permissive, allowing a GSA to adopt, but does not require that a GSA adopt. Nor does the language prohibit another agency, such as a JPA to adopt the GSP, nor is this authority specifically granted to another agency, such as a JPA.

However, water code section 10725 provides the authorities of a GSA. These authorities include, limiting extractions, requiring measurement devices, requiring reporting, initiating investigations, among other authorities. These GSA authorities are only triggered after a GSA has adopted a GSP. Specifically, Water Code section 10725 states: “A groundwater sustainability agency may exercise any of the powers described in this chapter . . . if the groundwater sustainability agency adopts and submits to the department a groundwater sustainability plan.” Therefore, SGMA seems to require a GSA to adopt a GSP in order to access the authorities provided by SGMA. Again, SGMA is silent as to whether an adoption by a JPA would be sufficient to trigger section 10725 and provide the individual GSAs with the authorities in this section.

DWR Interpretation

DWR staff recognized SGMA was not determinative on the issue, i.e. that SGMA does not directly address the issue of a JPA adopting a GSP on behalf of its members. DWR staff wanted to consider the issue further and discuss privately with counsel. However, generally DWR’s initial thought is that the structure of adoption should be determined at the local level; if the local management allows for JPA adoption, DWR was likely to allow or not otherwise challenge such an approach.

GSA Authority for Adoption

As previously discussed, Water Code section 10728.4 authorizes a GSA to adopt a GSP. The GWA does not have GSA status. Because of this provision of the water code, each GSA (regardless of the authorities provided in their respective resolutions or joint powers agreements) is the only identified agency that has the explicit statutory authority to adopt a GSP.

GWA Authority for Adoption (Not Explicit)

i. Filing of the Notice of Intent

Prior to initiating the development of a Groundwater Sustainability Plan (GSP), an agency must notify the DWR it will be developing a GSP. (23 CCR §353.6(a).) “Agency” refers to a groundwater sustainability agency as defined in SGMA. The notification provided to DWR must include general information about the process for developing the GSP, including the manner in which interested parties may contact the agency and participate in the development and implementation

of the GSP. (23 CCR §353.6(a).) After receiving the notification, DWR will post the initial notification information, including agency contact information, on DWR's website. (23 CCR §353.6(b).) A copy of the GWA's Notice of Preparation filed with DWR is attached to this memorandum as **Exhibit A**. No other GSA member of the GWA filed a Notice of Preparation with DWR. The Notice of Preparation indicated the JPA was preparing a GSP in coordination with all of its Members, each of which is a GSA.

ii. Joint Powers Agreement

The JPA provides the GWA with the authority to exercise the powers common to its member agencies pursuant to section 3.5 of the Agreement. The GWA has the authority to exercise the powers common to its member agencies and the power to “develop, adopt and implement a legally sufficient GSP covering those portions of the Basin that are within the jurisdictional boundaries of the Members, subject to the limitations set forth in [the] Agreement.” (Agreement, at 3.4(d).) The Agreement, in addition to providing the GWA the authority to adopt the GSP, there are several sections of the Agreement which assume or suggest the adoption of the GSP is an action which will be taken by the individual members. (See Agreement, at 2.3, 3.6(b), 3.6(c))

CONSULTANT RECOMMENDATION

Each GSA adopts the GSP, or a portion of the GSP pertaining to the area the GSA manages, and recommends the GWA accepts and implements the GSP.

ADVISORY COMMITTEE RECOMMENDATION

Advisory Committee to consider on August 14, 2019

BOARD RECOMMENDATION

Board to consider on September 11, 2019 (Note: NOI to be issued prior to Board consideration due to schedule requirements. If differing direction is provided by the Board, an amendment will be issued.)

Before the Board of Directors

Eastern San Joaquin Groundwater Authority
A Joint Powers Agency, State of California

B-18-01

MOTION:

BOARD ORDER AUTHORIZING SUBMITTAL OF A GROUNDWATER SUSTAINABILITY PLAN INITIAL NOTIFICATION FORM TO THE DEPARTMENT OF WATER RESOURCES ON BEHALF OF THE EASTERN SAN JOAQUIN GROUNDWATER AUTHORITY

THIS BOARD OF DIRECTORS hereby authorizes the submittal of a Groundwater Sustainability Plan (GSP) Initial Notification Form to the Department of Water Resources on behalf of the Eastern San Joaquin Groundwater Authority.

I HEREBY CERTIFY that the above order was passed and adopted on March 14, 2018 by the following vote of the Board of Directors, to wit:

AYES: HEBERLE, SILVERMAN, CAVALLINI, BIAGI, JR., THOMPSON, SALAVATORE, NAKANISHI, HOLMAN, THOMAS, FLETCHER, HENRY, THORBURN, KUIL, PANIZZA, AND WINN

NOES: NONE

ABSENT: FLINN, AND HERRICK

KRIS BALAJI, PMP, P.E.
Secretary of the
Eastern San Joaquin Groundwater Authority

