Legal Agreements for SGMA Compliance
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The Sustainable Groundwater Management Act Design

Keep It Local

Form GSA

Develop GSP

Or Else!

Water Boards
Essential SGMA Legal Agreements – Subjects:

- Formation of Groundwater Sustainability Agency (GSA)
- Representation of diverse stakeholders
- Agreement on and funding and the Groundwater Sustainability Plan (GSP)
- Agreement on and funding GSP projects and activities
- Resolving common law water rights and other legal claims
Process is not necessarily linear
Formation of a Groundwater Sustainability Agency

- Competition between potential local agencies?
- Local agency or combined powers (joint powers authority/MOA)
- Representation of non-public stakeholder interests
- Creative “Broad-table” governance
Representation of diverse stakeholders

- Stakeholders: local agencies (potentially several), regulated utilities, mutual water companies, private agriculture, private industry, home owners associations, rural domestic well owners, environmental NGOs, and others

- Broad-table GSA? How?

- SGMA allows JPAs, MOAs, utility participation

- Creative JPAs

- Muti-party watermaster through a friendly (stipulated adjudication

- Advisory committees?
Funding and Development of the Groundwater Sustainability Plan

• MOA/JPA among participating entities
  • Plan to make the plan (schedule, process, etc.)
  • Who is involved?
  • Who pays?
• Agreements with consultants (technical, legal, facilitator)
• Coordination with neighboring GSAs
Coordination Agreements with Neighboring GSAs

- Agreement on the science and issues
- Cooperative technical working groups
- Agreement on projects, funding etc.
- Agreement on cumulative production under each GSP
- Agreement on water quality responsibility
- Many other potential issues
Agreement on GSP projects and activities

- Agreement on projects
  - What projects?
  - Who pays? Who benefits? Water Purchase Agreement?
  - Design?
  - Permitting/CEQA?

- More agreements with consultants

- Funding agreements
  - Grant funding
  - Multi-party funding
  - Private/public partnerships
But!

“Nothing in [the SGMA], or in any groundwater management plan adopted pursuant to [the SGMA], determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.”

Water Code § 10720.5(b)
SGMA and Water Rights

- Who cuts production/who pays for the “fix”
- Plan development will often face water right claims (e.g., overlying landowner priority, prescription)
- GSA cannot determine water rights
- Encouraging compromise. How?
Resolving common law water rights and other legal claims

- Water rights “physical solution”
- Develop plan that reflects common law priorities
- Who can pump, how much, conditions
- Who must pay, when, conditions
- Agreement to bind water rights and other legal claims
- Resolving legal actions relating to GSP
Procedures Toward Compromise
Outreach and Early Collaboration

• Outreach, education, discussion, input
• Facilitators, workshops, steering/advisory committee, collaborative technical group
• Organizing diverse interests
• Inclusive governance
Substance Toward Compromise
Fair and Practical Production Allocations & Assessments

- Different classes of production rights that “reflect” GW rights
- Gradual ramp-down (time to adjust where practical)
- Management and replenishment assessments (various options)
- Transferability and market solutions
- Other restrictions and opportunities tailored to local conditions and desires
More Information

- **Brownstein Water Blog**
  water.bhfs.com

- **Desktop Reference to the Sustainable Groundwater Management Act of 2014**
  water.bhfs.com/sgmadesktopreference
Agreements to Form Groundwater Sustainability Agencies and Plans under the SGMA; Is the Sacramento Groundwater Authority a Good Model?

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The Sacramento Groundwater Authority (SGA)

- Formed in 1998
- Joint Powers Agreement By and Among Sacramento County and the Cities of Citrus Heights, Folsom and Sacramento
- Purpose: to manage groundwater in the “North Area Basin” (i.e., the area encompassing Sacramento County north of the American River and east of the Sacramento River)

- Diverse process with diverse stakeholders in Sacramento, Placer and El Dorado Counties
- Co-Equal Objectives – protection of Lower American River water supply and environmental values
- Six Major Elements, including a Groundwater Management Element
- Formation of SGA implements Groundwater Management Element in the North Area
- [http://www.waterforum.org/](http://www.waterforum.org/)
Key Elements of the Sacramento Groundwater Authority JPA

- Primary purposes: maintain long-term sustainable yield of North Area Basin and facilitate conjunctive use
- Creates public entity, separate from Signatory Agencies
- Concept: The SGA may exercise the common police power authorities of the Signatory Agencies to manage, protect and regulate groundwater resources in the North Area Basin in Sacramento County, without regard to the geographic boundaries of the Signatory Agencies

http://www.sgah2o.org/sga/news/publications/
Key Elements of the Sacramento Groundwater JPA

- Governing Board consists of 16 Members representing:
  - Elected Officials/Executive Staff of Each Signatory Agency (Cities and County)
  - Elected members of Boards of public water agencies
  - Board member or Executive Staff of Investor Owned and Mutual Water Companies
  - Agricultural Representative
  - Commercial/Industrial Self-Supplied Representative
- Governing Board Members Appointed by Signatory Agencies
  - Signatory Agencies maintain absolute appointing and removal authority
Key Elements of the Sacramento Groundwater Authority JPA

- Alternates to Governing Board appointment same as members
- Staggered four year Board terms
- Reservation of authority to add/remove Board seats
Key Elements of the Sacramento Groundwater Authority JPA

- Transacting Business; Quorum
- Voting requirements for Financial Matters; Double Majority Votes
  - Administrative Costs
  - Water Costs
Key Elements of the Sacramento Groundwater Authority JPA

- Organization of Board; Officers
- Executive Director, Staff and Counsel
Key Elements of the Sacramento Groundwater Authority JPA

- Powers and Authorities
  - Financial Incentives and Disincentives (fees and assessments)
  - Broad Management and Regulatory Authority
- Limitations on Authorities
  - No land use authority
  - No retail water sale
  - No pumping restrictions (other than financial incentives and disincentives)
- Termination of JPA
Model for SGMA Groundwater Sustainability Agencies and Plans?

- Use of Joint Powers Agency to Establish GSA
- Representative Board established Consistent with Joint Exercise of Powers Act
- Financial Tools to Manage Groundwater
- Facilitation of Conjunctive Use and Coordinated Management of Groundwater Resources
Work Still to be Done to Meet Requirements of SGMA

- Election to be GSA
- Coordinated implementation with other areas in North American River Subbasin (Bulletin-118)
- Development of SGMA Compliant GSP
Bulletin 118 Map for North American River Subbasin
QUESTIONS?
Groundwater Resources Association of California

Sustainable Groundwater Management Act, Part 5
Legal Agreements for GSAs
INDIVIDUAL LANDOWNER REPRESENTATION UNDER SGMA
Who can be a groundwater sustainability agency?

➢ “Any local agency or combination of local agencies overlying a groundwater basin may elect to be a groundwater sustainability agency for that basin.” (Wat. Code § 10723(a)).

➢ “Local agency means a local public agency that has water supply, water management, or land use responsibilities within a groundwater basin.” (Wat. Code § 10721(m)).
County Representation as Default

“In the event that there is an area within a basin that is not within the management area of a groundwater sustainability agency, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area . . .

Unless the county notifies the department that it will not be the groundwater sustainability agency for the area.” (Wat. Code §§ 10724(a) and (b).)
Colusa County
Groundwater Basin
Governance Option 1: Single GSA – Single GSP

GSA

DWR & State Board

County

Other Members

Landowners

GSP

PLAN

DATA

PLAN

DATA

GSP Implementation & Enforcement
Governance Option 2: Multiple GSAs - Single GSP
Governance Option 3: Multiple GSAs - Multiple GSPs

- County GSA & GSP
- Other GSAs & GSPs
- Coordination Agreement
- DWR & State Board

Data flow between County GSA & GSP and Other GSAs & GSPs.
County Representation Option 3: Multiple GSAs - Multiple GSPs

County GSA

- Small or West
- Med. or Central
- Large or East
- Advisory

Legal
Water
Planning

- Landowners
- Landowners
- Landowners

Non-L.O.
Domestic Wells
Surface Users

Enviro
County Representation Option 2: Multiple GSAs - Single GSP
County Representation Option 1:
Single GSA – Single GSP

GSA

Irrigation District

County Rep

Water Agency

Comm. Serv. Dist.

County Committee

Small or West

Med. or Central

Large or East

County

Non-L.O.

Advisory

Domestic Wells

Enviro

Surface Users

Legal

Water

Planning

Landowners

Landowners

Landowners
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