

MINUTES

Owens Valley Groundwater Authority

Board Members:

SIERRA HIGHLANDS	John Camphouse	COUNTY OF MONO	Fred Stump
EASTERN SIERRA CSD	Ron Stone	CITY OF BISHOP	Joe Pecci
INDIAN CREEK-WESTRIDGE CSD	Luis Elias	COUNTY OF INYO	Dan Totheroh
WHEELER CREST CSD	Glenn Inouye	BIG PINE CSD	Bryanna Vaughan
TRI VALLEY GWMD	Dave Doonan	KEELER CSD	John Dukes
		STARLITE CSD	Daniel Cutshall

November 19, 2018

The Owens Valley Groundwater Authority meeting was called to order at 2:03 p.m. at the Bishop Fire Training Center, Bishop, CA.

1. Pledge of allegiance

Dan Totheroh led the pledge of allegiance.

The Chairperson asked for a moment of silence in memory of all those that lost their lives in the wildfires and the recent shooting.

2. Public Comment

The Chairperson opened the public comment period and there was no one wishing to address the Board.

3. Introductions

The Board introduced themselves with one alternate in attendance; Big Pine CSD – Dave Allen. City of Bishop and Sierra Highlands were absent.

4. Approval of minutes from the October 25, 2018 OVGA Board meeting

The Chairperson requested a motion to approve the minutes of the October 25, 2018 meeting, first by Dan Totheroh, second by Luis Elias. Motion passed 9 yes (35 votes) 2 absent (9 votes) – City of Bishop, Sierra Highlands CSD.

5. Board Member Reports

Mr. Stump stated that Mono County/LADWP lawsuit will be in Alameda County and the first initial hearing date is December 18 or 19.

6. Financial Report

Laura Piper, Administrative Analyst for ICWD, gave a brief presentation regarding the OVGA finances. She stated the current OVGA cash balance is \$236,151.81. Mr. Totheroh asked how these compare to the expected timeline. Ms. Piper stated that would be discussed in item 12 of today's agenda.

Karen Schwartz, City of Bishop joined the meeting at 2:11 pm.

7. Appointment of Executive Director and discussion with possible action regarding long term recruitment of Executive Director

David Grah presented the staff report with regard to the Appointment of the Executive Director. The Board and staff discussed how fortunate they were to have Dr. Harrington as the defacto Executive Director, the possibility of a sole source contract with Dr. Harrington; the possibility of the need for an RFQ and if this route is taken, staffing would need to be discussed; and with Inyo County Boards approval, the possibility of the new Water Director serving as the interim. A motion was made by Glenn Inouye to enter into

negotiations for a sole source contract with Dr. Harrington prior to his retirement; if an agreement is not reached, negotiate with Inyo Board for interim services of the incoming Water Director until an RFP process can be completed, first by Glenn Inouye with a second by Daniel Cutshall. Motion passed 10 yes (42 votes) 1 absent (2 votes) – Sierra Highlands CSD. Ms. Roper asked if the grantee would audit the sole source justification, Mr. Vallejo stated he would need to review the grant agreement to see if there were any issues.

8. Approve Resolution Adopting Purchasing Policy of the OVGA

Jason Canger gave a brief summary of the purchasing policy being presented which he stated is a replica of the Mono County policy; allows for greater flexibility; and appoints the Executive Manager as the purchasing agent and specifies specific guidelines.

The Chairman called for a motion to accept Resolution 2018-05 as stated with a first by Dan Cutshall and a second by John Dukes, with a correction to the purchasing policy under section 3H, reference to “OVGA services” instead of “County services”. The motion passed 10 yes (42 votes) 1 absent (2 votes) – Sierra Highlands CSD.

9. Approve Resolution Establishing Bylaws of the OVGA – Appointment of OVGA representative

Mr. Vallejo provided a brief follow up of the previous meetings discussions regarding the Bylaws and presented the final draft for adoption. He stated a reserve policy will be drafted and presented separately at a future meeting by the Inyo County Auditor-Controller. The Chairman called for a motion to adopt Resolution 2018-06 with a first by Dave Doonan, seconded by Dave Alan. The motion passed 10 yes (42 votes) 1 absent (2 votes) - Sierra Highlands CSD.

10. Approval of MOU with the Inyo-Mono Regional Water Management Plan

Dr. Harrington stated at the previous meeting, the OVGA Board voted to join the IMRWM and deferred to this meeting to sign the MOU and designate a representative. Holly Alpert provided a brief overview of the responsibility in participating with the IMRWM. Chairman Stump stated he is comfortable with staff from both Counties continuing to participate in the IMRWM and representatives will be respective county staff from both Inyo/ Mono/City of Bishop. The Chairperson called for a motion that the primary representative for the IMRWM be staff from Inyo/Mono/ and City of Bishop with no alternate and to sign the MOU, first by Ron Stone, second by Daniel Cutshall. The motion passed 10 yes (42 votes) 1 absent (2 votes) - Sierra Highlands CSD.

The Chairperson called a break at 3:16 pm and reconvened the meeting at 3:29 pm.

11. Discussion regarding Associates & Interested Parties

Dr. Harrington referred to the previous meetings discussion regarding the inclusion of Associate and Interested Parties with a conclusion and direction to prepare a process for potential Associate and Interested Parties to show interest in joining the OVGA. He stated two statements of interest (Associate & Interested Parties) were provided in the packets for the Boards consideration; the statements are modifications to applications that were brought before the Board previously. April Zrelak requested a few wording changes to the statements of interest; Ms. Roper asked if the applications will be formatted the same and if the Interested Parties statement of interest could include an alternate also. Ken Toy stated he feels the mutual water companies are being treated unfairly in this process and there has been no inclusiveness. Karen Schwartz stated the City of Bishop is not interested in adding additional seats to the Board. Ms. Schwartz made a motion to stop the process of adding any additional seats to the Board with no second, motion dismissed. The Board decided on the following changes to the statements of interest:

- Associate applications: #7 needs to be BOLD and the wording changed to “generally describe how the applicant will implement and fund the groundwater sustainability plan when developed”; BOLD and larger print to the conflict of interest statement
- Interested Parties application: form should include an alternate

By unanimous consensus of the Board, it was agreed to make the above changes to the Associates & Interested Parties forms, and send out the forms to gauge interest.

12. Approval of Inyo/Mono/City of Bishop invoices for staff services

Dr. Harrington reviewed the staff report with the Board, stated the first two quarters had utilized half of the three year administrative budget which included preparation of the RFQ, DWR contract, contract with the consultant, preparation of the Bylaws and purchasing policy, etc. and stated we are under budgeted. The Chairman called for a motion to approve the invoices for Inyo/Mono/City of Bishop, motion by Dan Totheroh, second by Ron Stone. The motion passed 10 yes (42 votes) 1 absent (2 votes) – Sierra Highlands CSD.

13. Reports from OVGA members’ staff

Dr. Harrington stated a final signed contract has been received from DWR on the grant and from Daniel B. Stephens and Associates for the consulting contract.

14. Discussion regarding future agenda items

The Board requested a discussion regarding inclusions of mutual water companies, letters of interest, analysis of costs included with financial report, discussion of Executive Director, Election of Chair & Vice Chair.

15. Set Next Meeting

The next meeting was scheduled for December 13, 2018 in the Bishop Fire Training Center if available.

16. Adjourn

The Chairperson adjourned the meeting at 4:42 p.m.

SORT ORDER: OBJECT within BUDUNIT

SELECT BUDGET UNIT: 621601 ; OBJECT: 1000

Lg BUDGET UNIT	Primary Ref	Transaction Description	SS Ref Date	Job No	Debit	Credit	NET
GL 621601-1000	YEAREND	3. Balance forward 2016/2017	JE 07/01/18	02329334	199,708.69	0.00	199,708.69
GL 621601-1000	TTLOR	AutoID: CR18709A Job: 2277089	CR 07/09/18	02277089	35,239.77	0.00	234,948.46
GL 621601-1000	JE32179	AutoID: JA18809J Job: 2285810	JE 08/10/18	02285810	245.10	0.00	235,193.56
GL 621601-1000	INTEREST	AutoID: JA18A24A Job: 2306513	JE 10/24/18	02306513	958.25	0.00	236,151.81
GL 621601-1000	IS0918	AutoID: IS18C31B Job: 2311614	JE 11/01/18	02311614	0.00	69.06	236,082.75
GL 621601-1000	JE32887	AutoID: JT18N30I Job: 2329197	JE 11/30/18	02329197	0.00	16,572.98	219,509.77
GL 621601-1000	TTLOR	AutoID:WD18N27A Job:2331549	OH 12/05/18	02331549	0.00	16,693.88	202,815.89
GL 621601-1000	TTLOR	AutoID:WD18N27B Job:2333015	OH 12/06/18	02333015	0.00	1,582.56	201,233.33
*****Total *OBJT 1000		CLAIM ON CASH		DR	236,151.81	34,918.48	201,233.33
*****Total *BUDG 621601		OVGA-OWENS VALLEY GROUNDWATER		DR-CR	236,151.81	34,918.48	201,233.33

** G R A N D T O T A L **

201,233.33

Sort Order: OBJECT within BUDUNIT

SELECT BUDGET UNIT: 621601 ; OBJECT: 4000-5999

Lg BUDGET UNIT	Primary Ref	Transaction Description	SS Ref Date	Job No	Debit	Credit	NET
GL 621601-4301	INTEREST	1st qtr 18/19 interest	JE 10/24/18	02306513	0.00	958.25	958.25
*****Total *OBJT 4301		INTEREST FROM TREASURY		CR	0.00	958.25	958.25
GL 621601-5129	IS0918	IS PHOTOCOPIES	JE 11/01/18	02311614	69.06	0.00	69.06
*****Total *OBJT 5129		INTERNAL COPY CHARGES (NON-IS)		DR	69.06	0.00	69.06
GL 621601-5539	JE32887	I#00002 STAFF SVCS	JE 11/30/18	02329197	16,572.98	0.00	16,572.98
GL 621601-5539	201801	MONO COUNTY 9/17-11/18 OVGA ST OH	12/04/18	02331310	16,693.88	0.00	33,266.86
GL 621601-5539	111418	BISHOP, CITY OF 7/18-9/18 OVGA OH	12/05/18	02332028	1,582.56	0.00	34,849.42
*****Total *OBJT 5539		OTHER AGENCY CONTRIBUTIONS		DR	34,849.42	0.00	34,849.42
*****Total *BUDG 621601		OVGA-OWENS VALLEY GROUNDWATER		DR-CR	34,918.48	958.25	33,960.23

** G R A N D T O T A L **

33,960.23

COUNTY OF INYO

Budget to Actuals with Encumbrances by Key/Obj

Ledger: GL

As Of 12/10/2018

Object	Description	Budget	Actual	Encumbrance	Balance	%
Key: 621601 - OVGA-OWENS VALLEY GROUNDWATER						
Revenue						
4301	INTEREST FROM TREASURY	4,000.00	958.25	0.00	3,041.75	23.95
4498	STATE GRANTS	713,155.00	0.00	0.00	713,155.00	0.00
4599	OTHER AGENCIES	747,585.00	0.00	0.00	747,585.00	0.00
	Revenue Total:	<u>1,464,740.00</u>	<u>958.25</u>	<u>0.00</u>	<u>1,463,781.75</u>	<u>0.06</u>
Expenditure						
5121	INTERNAL CHARGES	153,000.00	0.00	0.00	153,000.00	0.00
5129	INTERNAL COPY CHARGES (NON-IS)	0.00	69.06	0.00	(69.06)	0.00
5263	ADVERTISING	2,000.00	0.00	0.00	2,000.00	0.00
5265	PROFESSIONAL & SPECIAL SERVICE	602,900.00	0.00	0.00	602,900.00	0.00
5291	OFFICE, SPACE & SITE RENTAL	3,000.00	0.00	0.00	3,000.00	0.00
5311	GENERAL OPERATING EXPENSE	500.00	0.00	0.00	500.00	0.00
5539	OTHER AGENCY CONTRIBUTIONS	50,000.00	34,849.42	0.00	15,150.58	69.69
	Expenditure Total:	<u>811,400.00</u>	<u>34,918.48</u>	<u>0.00</u>	<u>776,481.52</u>	<u>4.30</u>
621601	Key Total:	<u>653,340.00</u>	<u>(33,960.23)</u>	<u>0.00</u>	<u>687,300.23</u>	

OVGA Budget (3 Years)

Revenues	18/19	19/20	20/21
State Contribution	\$ 713,155.00	\$ -	\$ -
OVGA Board Contribution	\$ 249,194.98	\$ 249,194.98	\$ 249,194.98
Total Revenue	\$ 962,349.98	\$ 249,194.98	\$ 249,194.98
Expenditures			
		FOR YOUR BOARD TO DETERMINE	
Consultant	\$ 710,928.00	\$ -	\$ -
Executive Director			
Legal Support - Inyo	\$ 14,118.50		
Legal Support - Mono	\$ 10,125.00		
Staff Support - Inyo	\$ 15,320.77		
Staff Support - Mono	\$ 6,568.88		
Staff Support - City of Bishop	\$ 1,582.56		
Miscellaneous (copies/Adv/facility rental)	\$ 1,431.70		
3rd Qtr Projection (Legal/Staff) Oct-Dec	\$36,000		
Total Expenditure	\$ 796,075.41	\$ -	\$ -
Current Amount Available	\$ 166,274.57	\$ 249,194.98	\$ 249,194.98

Three Year Annual Commitment	
City of Bishop	\$ 52,859.66
Inyo	\$ 52,859.66
Mono	\$ 52,859.66
BP	\$ 22,654.00
Indian Crest	\$ 22,654.00
Wheeler Crest	\$ 22,654.00
Tri-Valley	\$ 22,654.00
	\$ 249,194.98

Expenditures as of 11/30/18

	1st Quarter/Mar-Jun	2nd Quarter Jul-Sep	3rd Quarter Oct-Nov (Projection)
Inyo (Legal Support, Staff Support and Misc costs)	\$ 13,966.39	\$ 16,904.58	\$17,000
Mono	\$ -	\$ 16,693.88	\$17,000
City of Bishop	\$ -	\$ 1,582.56	\$2,000
	\$ 13,966.39	\$ 35,181.02	\$36,000

Total Billed to Date	\$ 49,147.41
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OVGA Draft Budget Scenario (3 Years)

Revenues		2018/19	2019/20	2020/21
4301	Interest from treasury	\$ 4,000.00	\$ 4,000.00	\$ 4,000.00
4498	State Grants	\$ 713,155.00		
4599	Other Agencies (member contributions)	\$ 249,194.98	\$ 249,194.98	\$ 249,194.98
	Total Revenue	\$ 966,349.98	\$ 253,194.98	\$ 253,194.98
Expenditures				
5129	Internal Copy Charges	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
5263	Advertising	\$ 2,000.00	\$ 1,500.00	\$ 1,500.00
5265	Professional Services	\$ 710,928.00		
5291	Office, Space & Site Rental	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
5311	General Operating	\$ 500.00	\$ 500.00	\$ 500.00
5539	Other Agency Contributions (staff reimbursements)	\$ 140,000.00	\$ 140,000.00	\$ 140,000.00
	Total Expenditure	\$ 855,928.00	\$ 144,500.00	\$ 144,500.00
	Current Amount Available	\$ 110,421.98	\$ 108,694.98	\$ 108,694.98

Anticipated carry over for each entity -

Inyo/Mono/City of Bishop	\$25,765	\$22,935	\$22,935
CSD's & Tri Valley	\$10,048	\$9,891	\$9,891

OWENS VALLEY GROUNDWATER AUTHORITY

Big Pine CSD — City of Bishop — County of Inyo — County of Mono — Eastern Sierra CSD — Indian Creek-Westridge CSD — Keeler CSD —
Sierra Highlands CSD — Starlite CSD — Tri Valley Groundwater Management District — Wheeler Crest CSD

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Staff Report

Date: December 13, 2018

Subject: DWR's Tentative Acceptance of Application To Remove Starlite from the Basin

Introduction

As your Board is aware, an application was made to revise the boundary the Owens Valley Groundwater Basin to remove the Starlite zone from the Basin. DWR's Draft Basin Boundary Modifications tentatively approves the request. DWR will hold public meetings to present the Draft Basin Boundary Modifications and technical review process, answer clarifying questions, and receive public comments. After public comment closes, DWR will develop the final Basin Boundary Modifications. DWR's timeline to finalize the decision is as follows:

- | | |
|---|-------------------|
| • Public Meeting | December 11, 2018 |
| • Public Comment Period Closes | January 4, 2019 |
| • California Water Commission Meeting | January 16, 2019 |
| • Final Basin Boundary Modifications Released | February 2019 |

The public, including the OVGA, may provide public comments on the draft modification. **Staff requests direction in this regard.**

If the decision becomes final, the OVGA's ability to carry out its mission as a GSP via the joint powers agreement authority will be compromised because an OVGA-JPA Member (Starlite CSD) will be divested of its SGMA-granted powers. As such, if the decision does become final it is important that Starlite CSD separate from the OVGA-JPA. Although the JPA Article VI 1.1 does contain language limiting the ability of the Members to withdraw, the language was not written in contemplation of this scenario, and is not a bar to Starlite CSD from separating from the OVGA-JPA. This action can be accomplished by action of this Board if and when the draft DWR decision becomes final.

Since Starlite CSD is a non-funding member, there will be no effect on existing funding agreements. The weight of Member votes will, however, be proportionally affected by the change to the number of Members (M) in the vote share formula $V = 2 + (2MC/B)$ found in Article IV 2.1.

OWENS VALLEY GROUNDWATER AUTHORITY

Big Pine CSD — City of Bishop — County of Inyo — County of Mono — Eastern Sierra CSD — Indian Creek-Westridge CSD — Keeler CSD —
Sierra Highlands CSD — Starlite CSD — Tri Valley Groundwater Management District — Wheeler Crest CSD

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Staff Report

Date: December 13, 2018

Subject: Mutual Water Company GSA Participation

Per your Board's request, the following is another discussion regarding the local Mutual Water Company representative's apparent assertion that Mutual Water Companies have the right to participate in the governance of a GSP. This matter is not new, so this staff report simply reiterates what has previously been discussed. What follows below is consistent with the opinions expressed by State attorneys working on the SGMA legislation and implementation.

The JPA Act allows that two or more public agencies by agreement "may jointly exercise any power common to the contracting parties" but that it "shall not be necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised..." In other words, the powers to be exercised must *already be shared* by the parties to the agreement but after the agreement can be exercised throughout one another's joint geographical area by the newly-formed entity. Assembly Bill 2014 (Cortese), Statutes of 1994, added Government Code section 6525, which allowed mutuals to enter into JPAs with public agencies. But AB 2014 did not change the JPA Act limitation to common powers.

SGMA empowers local public agencies to be GSAs, but it does not do so for private entities. SGMA defines a "local agency" to be a "local *public* agency that has water supply, water management, or land use responsibilities within a groundwater basin." (Wat. Code § 10721(n). Emphasis added.) SGMA then allows that a local agency or combination of local agencies may be or form a GSA through a joint powers agreement, memorandum of agreement, or other legal agreement. This is consistent with the JPA Act. Since each local agency is empowered to be a GSA, a combination of local agencies can be a GSA through a joint powers authority or joint powers agency and exercise those GSA powers throughout a geographical management area created from all or part of their joint service areas.

SGMA does not allow a water corporation regulated by the Public Utilities Commission (PUC), or a mutual, to be a GSA. It specifies that such private entities may *participate* in a GSA through "a memorandum of agreement or other legal agreement." Tellingly, the reference to a "joint powers agreement" that appears in Water Code section 10723.6(a) with respect to GSA *formation* by local public agencies is omitted in 10723.6(b) with respect to GSA participation by mutuals and water corporations. In this way, SGMA treats private entities differently than public

agencies. It does not bestow regulatory authorities upon them, but recognizes they should have an avenue to “sit at the table” with the GSA and represent their own interests. To eliminate any ambiguity, SGMA declares in the subsection addressing PUC-regulated water corporations and mutuals that the “authority provided by this subdivision does not confer any additional powers to a nongovernmental entity.” (*Ibid.*)

The legislative history of SGMA supports this legal determination. SGMA was formed in 2014 through the passage of three contingently-enacted bills: Senate Bills 1168 and 1390 (Pavley) and Assembly Bill 1739 (Dickinson). SB 1168 included Water Code section 10723.6, the GSA formation language. However, at the time SGMA was enacted, the only private entities described in the GSA formation provision were PUC-regulated private water corporations who were allowed in subdivision (b), as follows, a “participatory” role, not GSA membership:

10723.6. (a) A combination of local agencies may form a groundwater sustainability agency by using any of the following methods:

(1) A joint powers agreement.

(2) A memorandum of agreement or other legal agreement.

(b) A water corporation regulated by the Public Utilities Commission may participate in a groundwater sustainability agency if the local agencies approve.

In 2015, two major bills were introduced to amend SGMA: SB 13 (Pavley) and AB 617 (Perea). Senator Pavley, one of the original authors of SGMA, introduced SB 13 to keep a commitment to “cleanup legislation” that she made during the passage of SGMA. AB 617 was sponsored by the Valley Ag Water Coalition, which represented about 43 mutual water companies, farm water districts, and ditch companies in the San Joaquin Valley. The March 26, 2015 version of AB 617 proposed that mutuals would be included in SGMA formation via JPA and, tellingly, that a JPA thus formed would hold SGMA regulatory powers, as would its signatories. Below, with additions in bold italic underline and deletions in bold strikeout, is the amendment language that was proposed in AB 617.

SECTION 1. Section 10723.6 of the Water Code is amended to read:

10723.6. (a) A combination of local agencies **or a combination of one or more local agencies and one or more mutual water companies** may form a groundwater sustainability agency by using any of the following methods:

(1) A joint powers agreement, **pursuant to the Joint Exercise of Powers Act (Chapter 5 commencing with Section 6500) of Division 7 of Title 1 of the Government Code), which may include a mutual water company pursuant to Section 6525 of the Government Code.**

(2) A memorandum of agreement or other legal agreement.

(b) A water corporation regulated by the Public Utilities Commission may participate in a groundwater sustainability agency if the ~~local agencies~~ **other parties in the groundwater sustainability agency** approve.

(c) **A groundwater sustainability agency formed pursuant to a joint powers agreement may exercise all of the powers granted pursuant to this part. The signatories to a joint**

powers agreement forming a groundwater sustainability agency are deemed to hold the powers granted to a groundwater sustainability agency pursuant to this part in common in order for the groundwater sustainability agency to exercise those powers.

Meanwhile, on April 23, 2015, SB 13 took the opposite approach. SB 13 amended section 10723.6(b) to limit private mutual water companies to a participatory role in the same manner as private PUC-regulated water corporations and, wholly contrary to AB 617, inserted language reemphasizing that participating agencies would not gain regulatory powers. SB 13 read:

SEC. 3. Section 10723.6 of the Water Code is amended to read:

10723.6. (a) A combination of local agencies may form a groundwater sustainability agency by using any of the following methods:

(1) A joint powers agreement.

(2) A memorandum of agreement or other legal agreement.

(b) A water corporation regulated by the Public Utilities Commission **or a mutual water company** may participate in a groundwater sustainability agency **if the local agencies approve. through a memorandum of agreement or other legal agreement. The authority provided by this subdivision does not confer any additional powers to a nongovernmental entity.**

Ultimately, the California Senate rejected the GSA formation language in AB 617 and that section was permanently deleted from the bill on July 16, 2015. Meanwhile, SB 13, with the above language, was passed by both houses of the Legislature and signed by the Governor on September 3, 2015. Therefore, any interpretation of the enacted language as providing the same authorities to mutuals as the rejected language undermines the Legislature's clear intent.

Conclusion:

Mutual Water Companies do not have the right to join the OVGA-JPA Board, but they may join the Board upon the agreement of the Members as set forth in the OVGA-JPA, or they may participate in the GSA as otherwise deemed appropriate by the Members.