

External Meeting Notes

April 28, 2016

Groundwater Sustainability Program

Sustainable Groundwater Management Team

Prepared by the Center for Collaborative Policy, CSUS; May 5, 2016

Purpose

These notes summarize a workshop conducted by the California Department of Water Resources (DWR) to provide information to Tribes and water agencies in the Southern California region about Tribal engagement in groundwater management planning under the Sustainable Groundwater Management Act (SGMA). The goals of the meeting were to:

- *Update on California groundwater regulations*
 - *Discussion on how the regulations relate to Tribes.*
- *Obtain feedback from Tribes on needed tools for reaching groundwater sustainability statewide.*
- *Update on DWR and Tribal Advisory Group development of Best Management Practices for Groundwater Sustainability Agency (GSA) and Tribal engagement, collaboration, and coordination.*

Introduction

The following is a list of Tribes and agencies represented at this meeting. The names of specific individuals who were in attendance are provided in the attached sign in sheet.

- Augustine Band of Cahuilla Indians
- Barona Band of Mission Indians
- Bureau of Indian Affairs
- California Indian Legal Services
- Campo Kumeyaay Nation
- DWR, Sacramento office
- DWR, Southern California office (Glendale)
- Hobbs Straus Dean & Walker, LLP
- Iipay Nation of Santa Ysabel
- La Jolla Band of Luiseño Indians
- La Posta Band of Mission Indians
- Los Coyotes Band of Cahuilla and Cupeno Indians
- Mesa Grande Band of Mission Indians
- Mootamai Municipal Water District
- Pala Band of Mission Indians
- Pauma Band of Luiseño Indians
- Ramona Band of Cahuilla Indians
- RCAC

- Rincon Band of Luiseño Indians
- San Manuel Band of Mission Indians
- San Pasqual Band of Mission Indians
- State Water Resources Control Board (SWRCB)
- Tomaras & Ogas, LLP
- Torres Martinez Desert Cahuilla Indians
- Upper San Luis Rey Resource Conservation District
- Valley Pauma CSD
- Viejas Band of Kumeyaay Indians
- Vista Irrigation District
- Yuima Municipal Water District

List of Acronyms

CASGEM	California Statewide Groundwater Elevation Monitoring
DWR	Department of Water Resources
GSA	Groundwater Sustainability Agency
GSP	Groundwater Sustainability Plan
IRWM	Integrated Regional Water Management
JPA	Joint Powers Authority
MOU	Memorandum of Understanding
SGMA	Sustainable Groundwater Management Act
SWRCB	State Water Resources Control Board

Upcoming Workshop

May 12, 2016 – Coyote Valley, CA (Ukiah area)

Issues

- A. Sustainable Groundwater Management Act
- B. DWR Groundwater Sustainability Program
- C. DWR GSP Draft Regulations
- D. Website Tools And Information Center
- E. Tribal Involvement Roundtable Discussion

Attachments Enclosed

- Notes and power points for this workshop
- Agency Contact Information

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ACTION ITEMS

1. DWR: send meeting materials by email to attendees. Include links to technical resource tools (websites).
2. DWR: provide a list of SGMA related projects funded.
3. DWR: provide additional information on funding eligibility including a description of what tribes must do to be eligible and information on any cap on funding to Tribes.
4. DWR: clarify whether GSAs must engage any Tribes with land and/or ancestral lands within the groundwater basin's watershed.

Welcome and Introductions

Denise Walsh, Rincon Band of Luiseño Indians, welcomed participants and invited them to introduce themselves.

Anecita Agustinez, Tribal Policy Advisor for DWR, also welcomed participants. She stated that DWR is conducting this series of informational meetings on sustainable groundwater management planning under SGMA for Tribes and local water agencies. This is the second of three meetings in various regions throughout the state. It will be followed by a wrap-up session during the summary of 2016 to discuss all of the concerns and questions surfaced in the meetings.

Sustainable Groundwater Management Act – Updates

Sustainable Groundwater Management Program and Tribal Participation

Anecita Agustinez noted that forthcoming Groundwater Sustainability Plan (GSP) Emergency Regulations will address further the roles Tribes can play in groundwater management planning under SGMA. Public comment has expired on the Draft GSP Emergency Regulations. However, Tribes can still participate in discussions relating to tribal engagement through the development of the Best Management Practices, participation with DWR Tribal Advisory Group, other regional meetings. Likewise, the GSP Emergency Regulations may be updated in the future.

Tim Ross, Groundwater Section Chief for DWR's Southern Region, provided an overview of SGMA, including how the law and regulations direct the formation of GSAs and development of Groundwater Sustainability Plans (GSPs).

- SGMA, which comprises of three pieces of legislation, passed in November 2014. There was an additional legislative update in September 2015.
- The main purpose of SGMA was to:
 - Establish local governance to protect and manage groundwater resources.
 - Achieve groundwater sustainability.
 - Provide for state intervention when necessary to achieve sustainability.
- Under SGMA, GSAs are responsible for groundwater management planning and implementation.
 - GSAs are organized locally and given certain powers and authorities to manage and regulate groundwater.
 - GSAs have responsibility for developing GSPs and meeting deadlines and targets set by the state.
- State roles under SGMA are:
 - DWR is responsible for regulation development and assistance.
 - SWRCB is responsible for enforcement.
- The SGMA legislation identifies undesirable results that do not constitute sustainability. These include significant or unreasonable lowering of groundwater levels, seawater intrusion, water quality degradation, land subsidence, and depletion of surface water caused by groundwater problems.
- Land subsidence was a driving force for the SGMA legislation.
 - Land subsidence rates are rapid in some places including 1 foot/year in the parts of the San Joaquin Valley, where subsidence is widespread.
 - Impacts on infrastructure – land subsidence “raises” infrastructure, such as well casings, as the ground drops.
- SGMA applies to the 127 groundwater basins identified as medium and high priority. These basins are required to develop a GSP.
 - These account for about 97% of the groundwater supply for the state.
 - In total there are 515 basins in the state. Lower priority basins have less population and usage.
 - Adjudicated basins are exempt from SGMA, except for minimal reporting (which began April 1, 2016).
- Adaptive Management is a General Principle of the GSP Emergency Regulations.
- SGMA Milestones for Success
 - GSAs are to be formed by 6/30/2017.
 - Can be composed of several different agencies working together.
 - Local agencies are in charge of forming GSAs. Local agencies may be the GSA, or may partner with other agencies, including Tribal, to form a GSA.
 - Collaboration is extremely important in forming GSAs.
 - The hope is that all relevant entities in a basin work together to form one GSA and GSP. If not, they are required to coordinate.

- Nonlocal agencies can be a partner.
- GSPs are to be developed by:
 - 1/31/20 for critically overdrafted basins.
 - 1/31/22 for all other high and med priority basins.
 - Basins with multiple GSPs must coordinate through agreements
- Achieving groundwater sustainability
 - 20 year implementation period.
 - 50 year planning horizon.
- There are 4 phases of GSP development and implementation.
 - Phase 1 (current phase): GSA formation and coordination
 - Realignment of basins, where applicable
 - Basin governance is established through formation of GSAs
 - Phase 2: GSP Preparation and Submission
 - GSAs develop and adopt GSPs
 - Phase 3: GSP Review and Evaluation
 - DWR staff review and evaluate GSPs to determine adequacy
 - Opportunity for public review of GSPs and input to DWR.
 - Phase 4: Implementation and Reporting
 - Every 5 years, GSPs are to submit a review to DWR.
 - The reviews provide opportunities for public input.

Discussion, comments, and questions

Unless otherwise noted, Tim Ross provided the answers below.

- Q: Will an existing water district typically be the GSA? How is DWR determining a local agency's jurisdiction?
 - DWR is letting the local agencies tell us what their jurisdiction is and show that they are an appropriate local agency to form the GSA. That process is subject to public review.
 - Materials are posted on the DWR website.
 - There is opportunity for other local agencies to contact DWR and provide feedback about whether the GSA proposal is appropriate.
 - There is a 90 day window after the GSA application is submitted for public comment.
 - September 2015 SGMA legislation clarified that GSAs cannot overlap. If two submit in an overlapping area, it is up to the two agencies to figure out how to handle it.
 - DWR has limited authority in the formation of GSAs.
- Q: What is the relationship between County General Plans and GSPs? The two processes are not running in parallel in San Diego, where there is a critical water storage.
 - When a County updates its General Plan, it must work with the GSAs. They are expected to collaborate.

- Follow-up question. There may be a 10 year difference between a GSP and a General Plan update, is that correct?
 - Yes. The law says that counties are expected to plan for land management and to make sure land use decisions do not impede groundwater sustainability.
- Q: We understand Tribes are not regulated by SGMA. Is it correct that Tribes can participate through an advisory committee? As Tribes, we are wondering how we should participate.
 - SGMA allows Tribes to opt in and make agreements to become part of the management system of a GSA. SGMA also allows Tribes to opt out. We hope Tribes will opt in and work with the local agencies to develop a management system that will support both the Tribes and sustainable groundwater management. SGMA allows, but does not require, Tribes to be part of a GSA under an official agreement such as a Joint Powers Authority (JPA) or Memorandum of Understanding (MOU). Participation in an advisory committee is another option for tribes to participate in the GSA discussions if they do not want to join the GSA through JPA or MOU.
 - SGMA allows Tribes as Sovereign entities to sustainably manage their own portions of the groundwater basin and engage with the GSAs through a variety of options.
- Q: Why should Tribes participate? What does it mean to “collaborate” or “cooperate” with GSAs?

Anecita Agustinez addressed the question as follows:

 - The purpose here is to raise these issue with the local entities and to consider how the law affects different Tribes. Those are the questions we need guidance on.
 - This question came up in Central Valley meeting and provided the opportunity for several Tribes to explain their consultation process to the local agencies.
 - The afternoon session will review a participation matrix of how local agencies can connect with Tribes. One suggestion was that each Tribe send a letter to the County stating whether interested or not interested.
 - Some GSAs may do a Tribal advisory committee where Tribes can advise/review the GSP.
 - Participation by Tribes is not mandatory, but SGMA and GSPs will apply to fee land within local jurisdictions, so Tribes may need to participate where they have fee land.
- Q: What are the benefits to Tribes for collaborating? SGMA allows the lead agency to make revisions without sending them out for public review. If a lead agency does that, and makes restrictions on a Tribe, will Tribe be notified? The draft regulations do not require Tribal notice.

- Anecita Agustinez and Tim Ross explained that local agencies cannot require Tribes to do anything. Tribes are sovereign.
- Q: Is it correct that guidelines will apply to fee lands? Do Tribes have the option of developing their own program for groundwater sustainability for fee lands?
 - Anecita Agustinez: The short answer is yes, some fee lands owned by Tribes may be required to comply with SGMA. A tribally developed program of groundwater sustainability could help in coordinating management of tribal fee lands with a GSA. Likewise, a Tribe may seek to manage those fee lands instead of the GSA through an MOU or other agreement.
- Q: There are many historic conflicts between Tribes and local agencies in this region. If there is a problem, does DWR step in to mediate?
 - Anecita Agustinez: DWR is providing some facilitation services. She noted that the afternoon session will include a discussion of funding and technical assistance resources for GSA formation and GSP planning that may include facilitation for these types of situations.

Avoiding Adjudication and Other Incentives for Tribal Participation in SGMA

Art Bunce, counsel for Barona Band of Mission Indians discussed the tribal perspective for staying engaged with SGMA. Art Bunce offered three reasons why Tribes should care about SGMA, even though state regulatory law does not usually apply to tribal trust lands:

1. It makes sense to manage limited groundwater resources for everyone's benefit.
 2. Many reservations have fee land, and it makes sense to coordinate management of trust and fee land on a reservation.
 3. By engaging in SGMA, Tribes may avoid water rights adjudication in state courts, which may occur if entities in a basin cannot agree on sustainable management.
- Art Bunce outlined his perspectives on the danger for Tribes of adjudication groundwater water rights in state courts:
 - Any adjudications that are prompted by SGMA will occur in state courts.
 - SGMA Adjudications determine who gets to pump, who cuts back, and by how much.
 - Adjudications have the potential for harming Tribes, particularly when done in state court. Because California does not limit the total number of pumpers, adjudications that have happened in state courts have resulted in all pumpers being required to reduce proportionally.
 - Adjudications that occur in federal court tend to have better outcomes for Tribes. These federal adjudications are based on federal Winter's Rights, a more favorable kind of water right for Tribes.
 - Winter's Rights, based on a court decision in 1908, established that a Tribe's water rights on a reservation were reserved to uphold the purpose of the reservation. Water rights date to the creation of the reservation, without requiring Tribes to reserve those rights.

- Winter's Rights are based on priority date (the first historical users are first "in line" to get water today). This is important because those with junior rights, toward the back of the line, are not entitled to any water if it runs out before it is their turn in line to access the water.
- Tribes may not have been in line because they previously were not using their rights. But based on Winter's Rights, the Tribe is allowed to step into line based on the date the reservation was created.
- Under Winter's Rights, the quantity of the Tribal water right is determined on the basis of Practically Irrigable Acreage (PIA).
 - However, courts may choose not to use the PIA standard, as happened to other tribal water rights cases.
- SGMA has a modified version of the adjudication system. The SGMA process operates on a very fast versus the decades for a typical water rights adjudication process). Any appeals go to the State Superior Court which tends to be very deferential to agencies and not as favorable to Tribes.
- Most adjudications in California happened in state courts. But the two adjudicated basins in Southern California that include Tribal lands both occurred in federal courts: Santa Margarita Basin and along the Colorado River.
- Art Bunce discussed how and why Tribes might engage in SGMA:
 - Tribes in medium and high priority basins, that are not currently adjudicated, are most affected by SGMA. Those in other basins are not really affected.
 - SGMA requires formal notice to Tribes when a GSA is proposing a GSP. Otherwise, SGMA requires notices to interested parties, which includes Tribes, at various points in the process.
 - Ways to engage:
 - Advisory Group. SGMA recommends the creation of GSA advisory groups. This option may be better for Tribes than being part of a JPA.
 - JPA. A JPA gives each member a seat at the table. But in a JPA, every member must comply with many requirements under state law that are expensive and require more transparency than Tribes might want as sovereign entities.
 - To avoid that challenge, a Tribe may form a separate entity, and have that entity (rather than the Tribe itself) enter the JPA and be subject to the state laws.
 - MOU. Through an MOU a Tribe may negotiate its decision-making rights with the GSA.
- Art Bunce reviewed the Aqua Caliente Litigation and its relevance to Tribal groundwater rights and potential participation in SGMA. Key points about this case, Art Bunce shared are as follows:
 - Winter's Rights have typically been assumed to apply to surface flows. Previously that case's application to groundwater has been unclear.

- This question of whether Winter’s applies to groundwater is important in Southern California, where some regions may have only groundwater and no surface water.
- Federal District Courts have answered this question three times, each time saying that Winter’s rights do include groundwater. But because these cases have not gone up on appeal, the decisions only affected the Tribes involved in the specific litigation in question.
- The Aqua Caliente case is important because it will go up on appeal to the 9th Circuit and thus set binding precedent for every Tribe in the 9th Circuit. It may also go to the Supreme Court.
- The federal judge ruled to split the case into three parts, as follows:
 - Do Tribes have groundwater rights under Winter’s?
 - The Judge ruled “yes” on this question last summer. The appeal is moving forward, with oral arguments expected in 1.5 years.
 - Assuming the first answer is yes, do Tribes have defenses to those rights?
 - If yes, what quantity are they entitled to?

Discussion, comments, and questions

Art Bunce provided the answers below, unless otherwise noted.

- Q: If a Tribe acquired lands and is undergoing a fee-to-trust process, is there a timeline for when those lands are no longer under SGMA jurisdiction?
 - The minute the land goes into trust, SGMA no longer applies.
- Q: Does the PIA calculation take into account lands, where Tribes may grow crops like grapes or avocados?
 - Winter’s has usually been interpreted to be a flexible standard. If the typical PIA calculation doesn’t apply well, Tribes can develop a new one and defend it.
- Q: If a Tribe wants to engage in SGMA on its fee land within reservation boundaries, is it better for Tribe to develop a separate entity to do that?
 - Yes, if the Tribe wants that entity to be part of the GSA through a JPA.

DWR Sustainable Groundwater Management – Online, Mapping, and Technical Assistance Tools

The path to access this website from DWR’s home webpage (www.water.ca.gov) is:

- DWR homepage → Issues Tab → Planning Tab → Sustainable Groundwater Management
- Access the “Groundwater Information Center” on the tan-colored side-bar

Water Management Planning Tool

Link: <http://water.ca.gov/groundwater/boundaries.cfm>

Art Bunce and DWR representatives demonstrated various tools from DWR's online Groundwater Information Center. The Water Management Planning tool is a web-based application to assist local agencies in water management planning efforts. It is an interactive map application that allows users to overlay numerous Geographic Information Systems (GIS) layers onto a map of California, and provides access to more information about those data layers. The Water Management Planning Tool is intended to assist local agencies with their responsibilities related to the California Water Plan, Integrated Regional Water Management (IRWM), and SGMA and as an informational tool for all interested parties.

Accessing and using the Water Management Planning Tool:

- Links:
 - The planning tool is available through the DWR Groundwater website at: <http://water.ca.gov/groundwater/boundaries.cfm>
 - The direct link is: <https://gis.water.ca.gov/app/boundaries/>

- Some of the boundaries and layers shared include:
 - DWR Regional Office Service Areas
 - Tribal lands
 - California Statewide Groundwater Elevation Monitoring (CASGEM)
 - Groundwater basin prioritization (high/med/low/very low)
 - Water agencies (highlights overlaps)
 - Bulletin 118 basins
 - Bulletin 118 is a DWR document that provides information about groundwater basins and sub-basins, including boundaries, hydrology, hydrogeologic characterization, etc.
 - Adjudicated basins
 - IRWM regions
 - Groundwater management plans under A.B. 3030, S.B. 1938, A.B. 359
 - Various base maps
 - Disadvantaged Community Tracts

GSA's Interactive Map

Link: http://water.ca.gov/groundwater/sgm/gsa_map.cfm

This online mapping tool can help Tribes identify the relevant GSA(s) for their area. It shows the location of local agencies that decided to form GSAs. It also provides a link to GSA submittals that have additional information about GSA outreach to Tribes and contact information.

- Interactive Map Layers discussed:
 - GSAs and overlaps
 - Adjudicated areas
 - Bulletin 118 groundwater basins
 - CASGEM prioritization
 - Counties
 - B118 basins
 - GSA submittal, which will include whatever information the GSA included about Tribal outreach

- The GSA Interactive Map webpage includes a link to the GSA Formation Table.
GSA Formation Table: http://water.ca.gov/groundwater/sgm/gsa_table.cfm#table
 - Through this table users can see who has submitted GSA applications and access the submittals. DWR updates the table regularly.
 - The table shows the names of all entities that have applied to be GSA for a basin. The write-up of each request is included, including whether the GSA identified any Tribes in the Basin.
 - The group looked at the submittal for Borrego Basin. The submittal said there are no Tribes, but participants noted that there are Tribes are in the headwaters.
 - DWR suggests the Tribe contact the GSA and DWR and let them know that they are an interested party and seek get Notice.

Groundwater Information Center Interactive Map Application

Link: http://water.ca.gov/groundwater/MAP_APP/index.cfm

This tool provides GIS layers containing geospatially-referenced groundwater-related information on:

- Water levels
- Boundaries
- Subsidence

Basin Boundary Assessment Tool

Link: <http://water.ca.gov/groundwater/sgm/bbat.cfm>

The Groundwater Basin Boundary Assessment Tool is intended to assist local agencies with their planning efforts related to basin boundary modifications. It includes very detailed geologic data.

Basin Boundary Modification Request System

Link: <http://sgma.water.ca.gov/basinmod/>

This website provides access to information about submitted basin boundary modification requests.

Water Data Library

Link: www.water.ca.gov/waterdatalibrary/

This tool provides DWR data on water production, wells, and water quality throughout the state. How many different wells with groundwater level data. In rural areas, it lists individual wells. Some of the data are inconsistent and incomplete.

Adjudicated Basin Reporting

Link: <http://www.water.ca.gov/groundwater/sgm/adjudicated.cfm>

This website provides access to adjudicated basin reporting under SGMA. Follow the link in the box to <http://sgma.water.ca.gov/adjudbasins/>, and then click “View List of Submitted Reports” in the tan box.

Discussion and Comments

The morning session concluded with additional questions and comments from participants.

San Luis Rey Basin and subterranean streams.

- The group discussed the San Luis Rey groundwater basin and current proposals to divide it into 2-3 basins. This is a unique basin because of its subterranean stream geology. SWRCB has jurisdiction over water rights for subterranean streams, and SGMA does not apply to those.

Q: If there are 3 separate GSAs within the San Luis Rey sub-basin, do those need to coordinate their GSPs? Will they have a single enforcement arm?

- Sam Bolan of the SWRCB addressed this question.
- Yes, to the first question. Under SGMA, within each basin or sub-basin, all GSPs must be coordinated.
 - What may be confusing is that SGMA provides authorities to GSAs to manage groundwater, but not to manage subterranean stream water. SGMA excludes subterranean streams from the definition of groundwater. A GSP can only address groundwater.
- In response to the second question: SGMA does not spell out the enforcement part. It will be up to the GSAs to determine how they intend to enforce their GSPs.

- Tim Ross provided additional information about the San Luis Rey basin.
 - Historically, all water west of a certain point is either surface water or subterranean stream, and therefore there is no groundwater to manage in that area.
 - The proposal is to break the boundary at that point, where to the east there is groundwater and to the west there is not.
 - We are working through those (and other) Basin Boundary requests. Modifications are anticipated for release and public review by end of May, and with workshops following potentially in early June.
- Q: If you form a GSA under SGMA, does that do away with appropriate rights and pueblo rights?
 - Art Bunce: No, those rights continue to exist, but are adjudicated and administered in a different way.
- Q: In high priority basin currently without a GSA, how can we identify interested parties that are working toward forming a GSA?
 - You can use the mapping tool to identify the water districts and other local agencies in the basin.
 - You may also contact DWR for assistance.
- Q: Regarding Proposition 1A funds, if a Tribe wants to submit a proposal through the IRWM program, what jurisdictional areas will they be competing with?
 - Anecita Agustinez: Tribes are eligible for Proposition 1 funds, but need to be participating through the IRWM group.

Headwaters and SGMA.

Exclusion of uplands and headwater areas from the groundwater basin definition. Participants had many comments and questions about why upland recharge zones are not defined within groundwater basins. Many expressed strong concerns that headwaters were excluded from the conversation.

- Q: Upland recharge zones do not fall within the groundwater basins, as currently defined. What are the implications for activities outside the basin boundary? What is the standing of property owners or Tribes in those upland areas?
 - Art Bunce and DWR: SGMA has a narrow definition of what constitutes a basin. A basin is defined by alluvium aquifers. Where there are fracture zones or decomposed granite, it is usually outside of a Bulletin 118 Basin.
- Q: How would DWR likely respond to a request to expand basins to include upland and headwater areas?

- Tim Ross: SGMA basins are defined through Bulletin 118, which was recently updated in 2003. Bulletin 118 defines a groundwater basin based on alluvium, i.e., materials that have been deposited by streamflow. The alluvium has generally filled low areas and is surrounded by harder, typically fractured bedrock. The alluvial areas have a higher storage capacity per volume and typically have higher capacity availability, i.e., wells produce better there.
 - DWR is not likely to change this alluvial-based definition.
 - It is possible that in the future groundwater management will be based on watershed management, which is consistent with federal adjudications.
 - However, a watershed based approach would require legislation. At this point DWR does not believe it is justified under the current legislation.
 - The current basin boundary modification process closed in March 2016. DWR is in the process of technical reviews on all of those requests. They expect that another window for basin boundary modifications will open in the 2018-2019 timeframe. This modification timeframe is consistent with another update of Bulletin 118, which is scheduled for completion in 2020.

- Comment: Excluding upland areas does not make sense. We need to look at the watershed. Otherwise, this lets everyone pumping upstream off the hook.

- Q. How can a Tribe be involved in a basin in which it is not located, or is in the upland area?
 - Tim Ross: Tribes may request to be include on the Interested Persons list, or may be part of the advisory committee.

 - Anecita Agustinez: Northern Tribes in volcanic areas have also brought up this issue about uplands not being included in groundwater basins. In addition, from a Tribal perspective, water balance is a holistic spiritual approach that includes access to traditional practices. Anecita Agustinez encouraged participants to raise these issues in public comments.
 - Tim Ross added that, for the Northern Tribes, the volcanic geology may be sitting on top of alluvium.

 - Comment: If you are not including upland recharge areas in determining safe yield, then you are essentially stealing water from those areas. This will allow valleys to determine higher safe yields and pump more groundwater, and will cause groundwater levels in upland areas to drop. Tribes in upland areas will then need to sink expensive new wells. This will hurt the Tribes. In Warner Valley, for example, pumping that borders on groundwater mining is increasing the groundwater transport rate, and that will cause water level drawdown in upland areas.

- Tim Ross stated that the goal is to develop a GSP that manages the whole basin sustainably, including input, outflow, and use in the basin. With respect to Tribal reservation lands and how those are managed, a GSP cannot impinge on Tribal management on the reservation or have authority to limit pumping there. Hopefully the parties will interact to come up with the water balance.
- Tim Ross stated that it's also important for Tribes to look carefully at GSPs and the assumptions about Tribal lands. If there is a mismatch with respect to the Tribe's rights or usage, DWR needs to know that so it can make a judgment on whether the GSP will be successful.
- Comment: Tribes should keep a record of their water levels, and how those levels are changing. If groundwater levels continue to drop, that documentation can be used in legislation.

DWR Proposition 1 Initiative Updates

Anecita Agustinez provided an overview of funding resources for Tribes under the Proposition 1 water bond, focusing on currently available funding under Chapter 7, IRWM. She provided a handout (attached) as a resource for grant managers, with information on available funding under Proposition 1.

- Contacts for Tribes:
 - Jennifer Wong is the grants manager and Tribal liaison for DWR's Southern Region, based in Glendale.
 - Emily Alejandrino and Anecita Agustinez are in Sacramento.
- Proposition 1 includes 13 sections and 11 chapters.
 - Chapter 7 monies under IRWM will be available in approximately the next 6 months. [LS1]
 - Prior to Proposition 1, funding for IRWM was under Proposition 84. Now it is under Proposition 1.
 - Most Chapter 10 monies for sustainable groundwater management will be available later. DWR has awarded some grants for local planning in stressed basins. [LS2]
- Groundwater funding: out of \$900 million available for groundwater through Proposition 1, \$800 million is allocated to SWRCB to distribute, and \$100 million is allocated to DWR to distribute. [LS3]
 - DWR has \$10 million available for groundwater planning (including GSA formation, outreach, and technical assistance) in counties with stressed basins.
 - Approximately \$7 million of this has been awarded. [LS4]
 - SWRCB recently entered a process to provide grant funding for technical assistance for groundwater and other resources. This program will assist in providing technical assistance to local agencies

- Proposition 1 and Disadvantaged Communities (DACs)
 - The Disadvantaged Community Involvement Request for Proposal, under IRWM, may provide resource opportunities for Tribes. Link: http://www.water.ca.gov/irwm/grants/docs/p1DACinvolvement/2016Prop1IRWM_DACI_RFP_PublicReviewDraft.pdf
 - Proposition 1 has a 10% requirement to service DACs that are economically disadvantaged and under-represented.
 - SB 208 will provide for advanced payment of Proposition 1 funds for projects by (or that benefit) DACs. Cost sharing requirements are also waived for DACs.
- Notes on Proposition 1 eligibility:
 - Tribes are an eligible applicant under Proposition 1 (unlike previous programs).
 - Entities must participate in in SGMA to be eligible for Chapter 7 and Chapter 10 funding under Proposition 1.
- DWR alignment with other state agencies and funding programs:
 - Other Proposition 1 funding sources are administered through SWRCB or other agencies. The state recognizes the problem of trying to fund everything that needs to be funded, with \$7.5 billion.
 - SWRCB's Financial Assistance Application Submittal Tool (FAAST) (Link: <http://faast.waterboards.ca.gov/>) is a one-page application that helps potential funding recipients to identify and apply for funding programs for which they are eligible.
 - There is not yet interagency alignment on funding programs through DWR, SWRCB, and other agencies. For example, for Tribes to receive funding, some programs require limited waivers of sovereign immunity, while others do not.
 - The State of California is just learning how to improve consultation with Tribes. Executive Order B-10-11, by Governor Jerry Brown, established the position of Governor's Tribal Advisor in the Governor's Office.

Discussion, comments, and questions

Anecita Agustinez provided responses, unless otherwise noted.

- Q: DAC eligibility for funding is based on the 2010 census. This is a problem for some Tribes, such as La Jolla Band of Luiseño Indians, where low census participation resulted in not being classified as a DAC. Is there any way to change that?
 - Under-represented communities have not been defined. There may be an opportunity to redefine DACs if needed. [LSS]
- Q: Will the website list the types of projects that can be funded through Proposition 1? Are there limits to how much can go to Tribes?
 - DWR can share a link where grant guidelines are available.
 - <http://bondaccountability.resources.ca.gov/p1.aspx>

Developing Best Management Practices (BMPs) for GSA/Tribal Engagement

Emily Alejandrino, of DWR, described how DWR is developing a guide of Best Management Practices to help GSAs and basins achieve sustainable groundwater management.

- The BMPs will include a section on Tribal-GSA collaboration.
- DWR's DWR Tribal Advisory Group is assisting with this effort. Emily Alejandrino provided handouts on the definition of Tribal Law and a Tribal Lands primer, both written by Art Bunce, as examples that the Tribal Advisory group produced for educating local agencies about Tribes and starting conversations about how to work together.
- Emily Alejandrino encouraged participant thoughts and comments about Tribes and agencies feel are good practices on coordination.

Roundtable Discussion on Tribal engagement in SGMA

The Roundtable provided opportunity for discussion and general question on SGMA issues of concern for Tribes and local agencies.

- Comment: DWR should make it clear to the agencies that it is their responsibility to do Tribal outreach, and not just under AB 52. Our Tribe recently worked with a water agency in our area. They believe they only need to talk to us under AB 52, in regards to Tribal cultural resources under California Environmental Quality Act (CEQA) planning.
 - Others noted that Tribes can also be proactive and notify the GSA that they are an interested party in the basin.
- Comment: In reviewing GSPs, how will DWR respond to lack of Tribal information or engagement?
 - Tim Ross: DWR is currently developing regulations for both what is required in GSPs and DWR's review process.
 - We are not yet sure how we will address the issue of GSPs that did lacked Tribal engagement. Within the submittal and review, there should be opportunity for Tribal input. If we see no Tribal outreach, we may contact Anecita and the Tribes. If there are data gaps, such as no water production for an obvious Tribe in the basin, we will investigate that and contact the Tribe to hopefully provide information.
- Comment: A lot will depend on who your GSA is and what kind of relationships there is with the Tribe. Tribes already have relationships with many water districts, which are likely candidates for the GSA. Some have poor relationships. For example, in San Diego County, we do not know who the major players will be, and they have different kinds of relationships with the Tribes.

- Comment: Tribal protection language in SGMA says federal reserved water rights have to be respected in the plan (section 1072.03). The burden is on the GSA to do that.
- Comment: The role of SWRCB/DWR to make sure best practices are followed and plans implemented is really important. It is difficult for Tribes to deal with the water districts. We lack the ability to hold GSAs accountable (the participant noted a past history of challenges with water conservation and arsenic contamination).
- Comment: It is good if agencies are required to engage with the Tribes. There is substantial Tribal ownership of water in these basins, and agencies might want to know that. (The participant noted that the IRWM process originally did not have a requirement to consult with Tribes, but the second round did.)
- Comment: The state needs to educate counties and GSAs that what they do has an impact on reservations. We hear that this law does not apply on reservations, or will not impact reservations, but there are many ways that it could. Off reservation activities do affect Tribes: For example:
 - San Diego County has used reservation lands as part of its quantification of water to justify development projects, with the result that Tribes get blamed for stealing water if San Diego cannot access it.
 - When nearby development worsens water quality, a Tribe has to implement expensive treatments.
 - When critical habitat for an endangered species is placed next to a reservation, it affects Tribes.
 - Water agencies cite Forest Service and Bureau of Land Management lands as recharge sources, and Tribes should also be able to.
- Anecita Agustinez: In the GSA formation review process Tribal engagement is not just checking a box; DWR wants to see a narrative about Tribal engagement. This model builds on the idea of local regional control, learning from the IRWM process.
 - Water agencies need to know what to do when Tribes do not respond to outreach.
 - There are things Tribes can do to be proactive. For example, Tribes may want to designate a point of contact for SGMA.
 - The Office of Planning and Research is currently reviewing SB 18, which is a Tribal consultation process for local governments. The revisions may significantly affect Tribal consultation requirements.
- Comment: DWRs draft regulations are not specific about requirements for Tribal outreach, for example how that consultation takes place, with whom, etc. One thing that is not working is notification to the Tribes and consulting with the Tribes. For example, if Tribes develop their own water quality standards that apply to groundwater

recharge, how will that be addressed in GSPs? The state agencies should step up and look out for the Tribes.

- Anecita Agustinez: DWR's Tribal Advisory Group is discussing many of these issues, including DAC qualification, management practices for Tribal outreach, agency alignment, and education for counties on Tribal outreach, Tribal law, and Tribal lands.
 - Over 30 Tribes are participating in the DWR Tribal Advisory Group. DWR has also done one-on-one meetings with Tribes to get their input. The Tribal consultation process is ongoing. More information is available on that.
 - Tribes are encouraged to be proactive on GSAs, GSPs, and SGMA. For example, contact counties and local agencies to let them know how you want to be involved.
 - Stephanie Lucero: DWR is revising the DRAFT GSP emergency regulations. The BMPs that DWR is currently developing will include more specific guidance to local agencies about how and when to contact Tribes.
 - Emily Alejandrino: Because of how SGMA is written, DWR is on a fast-track to release the GSP emergency regulations by June 1. These are emergency regulations, and will change. There will be time/opportunities for Tribes to engage and comment on these regulations.
 - Tim Ross: The Glendale office will review and evaluate Southern California GSPs. Tribes are encouraged to provide feedback at any point, including comments on how Tribes have been involved and whether or not the GSP takes account for and incorporates Tribal needs and uses. That information will help DWR staff evaluate the GSPs.
- Comment: How can a Tribe participate in SGMA and not get involved in a state adjudication process? The San Luis Rey watershed is a good example of this challenge this will be. It has all or part of 8 different reservations with federally reserved water rights.
 - In addition to BMPs for local agencies, Tribes would like to know their options for engaging in SGMA in ways that will not expose them to state adjudication any more than if they had not participated.
 - Anecita Agustinez: Coordinating agreements are one opportunity to be involved and to have some control of the extent of that relationship. This is new territory. There are lots of forces pushing people to the table.
 - Ms. Lucero encouraged local agencies to ask any questions to the Tribes about preferred ways to engage them.
 - Comment: The state agencies (DWR and SWRCB) should educate GSAs and local agencies that the legal structure of SGMA includes respecting federally reserved water rights, and what that means. There is no reference in the guidelines about specific

provisions of SGMA that talk about the primacy of those water rights and the need the need to respect them in adjudications or GSPs. It should not just be up to Tribes to approach the agencies and express their interest.

- Comment: Thank you to DWR for these meetings. We need the political willingness from the state to keep the door open for Tribes, provide resources, and influence decision-making in Sacramento to help Tribes.
- Comment: In Coachella Valley, we have overdraft, subsidence, and compromised water quality. We only have until 2020 to develop a GSP. For us it is also important that the Bureau of Indian Affairs, which has a responsibility to defend and protect our water resources, work with us to develop a good plan to find the resources that we need. We want to be engaged but we need more resources to be able to move faster and react.
- Anecita Agustinez: We would like to hear from Tribes about what an advisory committee would look like, for example would it mean participation of all Tribes within a watershed? What else should go into the BMPs? DWR will share what we learn with the Office of Planning and Research as they revise SB 18 regulations.
 - To clarify, DWR will not be managing these advisory groups; it will provide agencies with BMPs for managing them.
 - Comment: Tribe should understand that an advisory group will have voting power.
- Ms. Lucero asked if there is agreement that Tribes are recommending that GSAs reach out to all Tribes within the watershed.
 - Q: Is that contrary to SGMA, since SGMA is based on CASGEM?
 - Anecita Agustinez: The watershed makes sense for identifying Tribes with an interest in the basin, in addition to Tribal traditional territory beyond the watershed. She recommends utilizing DWR's GIS tools to look at watershed boundaries and Tribes within those.
- Comment: When local agencies reach out the Tribes, it would be helpful if they suggest some framework for collaboration.
- Comment: GSAs should be collaborative in their request to work with Tribes, and not just ask for the Tribe's data. When the GSA initiates an advisory committee, it should provide the information about what it is working on and ask if it affects a Tribe's water rights. That way a Tribe has the information and can see if it impacts their reserved water rights.
- Comment: It is important that that local agencies respect that Tribes also have their own processes; not everything should go under SGMA. Southern California Tribes have been

managing and protecting their water resources for a long time. Collaboration is a way to coordinate those efforts. Tribes are interested in being able to regulate on-reservation resources and also respond to off-reservation activities that affect them.

- Ms. Lucero: One recommendation that has been expressed is for DWR to provide a letter template for local agencies to outreach to Tribes. The letter could include language such as, “We recognize that many Tribes already have plans and we want to make sure we are coordinating with those.”
- Comment: Agencies may not realize that many Tribes already have very advanced monitoring programs. That’s a reason Tribes may not want to be involved.
- Q: In terms of the triggers for not achieving sustainability, how are issues like TMDLs addressed in those. What issues are prioritized?
 - Tim Ross responded that it is up to GSA to define what issues there are in the basin and where those issues become a “significant and unreasonable” problem. DWR has tried to be prescriptive to a degree but also allow local leeway in defining “significant and unreasonable.”
 - Follow up question: Could a Tribe advise on those kinds of questions (prioritization of issues, and what defines significant and unreasonable) as a member of an advisory committee?
 - DWR Response: Yes.
 - SWRCB response: SWRCB still has regulatory authorities in those other areas. A GSA will not have authority to manage a lot of those things. So there will need to be coordination.
- Q: In the case where wells are pumping from subterranean streams and drawing down the river, will that be governed by SGMA or SWRCB?
 - SWRCB response: Surface water depletions are different than subterranean streams. If pumping activity is drawing down the river (i.e. surface water depletion), SGMA will apply. SWRCB regulates subterranean streams under California’s surface water rights system.
 - Follow up question: How will we distinguish between pumping from the subterranean stream versus from groundwater?
 - SWRCB would use a numerical model, including geological characteristics, streamflow, and pumping, to determine where water is coming from. The State Water Board has adopted a number of decisions and orders identifying specific subterranean stream locations.
- Q: There is major groundwater depletion happening in the Coachella Valley, and the recharge is with lesser quality water. So keeping a constant level means lowering water quality. How does SGMA deal with basins that are being recharged? What kind of regulations will there be on that?

- DWR: This is captured under the water quality degradation consideration in the SGMA regulations, which says that a GSA’s management of the groundwater cannot be making the water quality in the basin worse.
- SWRCB: Aquifer recharging also requires a permit, and SWRCB will look at water quality impacts when assessing that.
- Participant noted that it is already being recharged with lesser quality water.

Closing

Anecita Agustinez thanked the Rincon Band of Luiseño Indians for providing the meeting space and refreshments, noting that Chairman Mazzetti has been very involved in DWR’s Tribal Advisory Group. She also thanked participants, expressing DWR’s appreciation for their time and expertise, and being able to engage with Tribal governments.

Denise Walsh also thanked attendees, including the Tribal staff, attorneys, and water agencies. She noted that this was the second meeting the Rincon Band of Luiseño Indians has hosted on this topic, and that they look forward to possibly hosting more.

Appendix A. Participants List

NAME	AFFILIATION
Tribes	
Margaret Park	Agua Caliente Band of Cahuilla Indians
Becky J. Ross	Augustine Band of Cahuilla Indians
Art Bunce	Barona Band of Mission Indians
Michael Connoly	Campo Kumeyaay Nation
Vernon Lopez	Iipay Nation of Santa Ysabel
Tej Attili	La Jolla Band of Luiseño Indians
John Beresford	La Jolla Band of Luiseño Indians
Thomas Rodriguez	La Jolla Band of Luiseño Indians
George Wilkins	La Jolla Band of Luiseño Indians
James 'Potts' Hill, Sr.	La Posta Band of Mission Indians
Desi Vela	La Posta Band of Mission Indians
John C. Parada	Los Coyotes Band of Cahuilla and Cupeno Indians
Cory Lachusa	Mesa Grande Band of Mission Indians
Heidi Brown	Pala Band of Mission Indians
Eric Bikis	Pauma Band of Luiseño Indians

Chris Devers	Pauma Band of Luiseño Indians
Miguel Hernandez	Pauma Band of Luiseño Indians
Jonathan Arriaza	Ramona Band of Cahuilla Indians
Nicolette Jonkhoff	Ramona Band of Cahuilla Indians
Melissa Estes	Rincon Band of Luiseño Indians
Jessica Florez	Rincon Band of Luiseño Indians
Monica Lopez	Rincon Band of Luiseño Indians
Eric Mendoza	Rincon Band of Luiseño Indians
Faith Price	Rincon Band of Luiseño Indians
Denise Turner Walsh	Rincon Band of Luiseño Indians
Adam Ciotti	San Manuel Band of Mission Indians
Todd Sudmeier	San Manuel Band of Mission Indians
Diana Martinez	San Pasqual Band of Mission Indians
Alberto Ramirez	Torres Martinez Desert Cahuilla Indians
Julie Hagen	Viejas Band of Kumeyaay Indians
Local Agency / Other Non-Tribal	
Doug Garcia	Bureau of Indian Affairs
Patrick Taber	Bureau of Indian Affairs
Dorothy Alther	California Indian Legal Services
Nicole Scott	California Indian Legal Services
Stephen Quesenberry	Hobbs Straus Dean & Walker, LLP
Claude Devers	Mootamai Municipal Water District
Eagle Jones	RCAC
Brenda Tomaras	Tomaras & Ogas, LLP
Jesse Hutchings	Upper San Luis Rey Resource Conservation District
Oggie Watson	Upper San Luis Rey Resource Conservation District
Charles Mathews	Valley Pauma CSD
Jessica Sherwood	Vista Irrigation District
Don Smith	Vista Irrigation District
Lori Johnson	Yuima Municipal Water District
State Staff	
Anecita Agustinez	DWR – Sacramento
Emily Alejandrino	DWR – Sacramento
Brian Moniz	DWR – Southern California Region
Tim Ross	DWR – Southern California Region
Sam Boland-Brien	SWRCB – State Water Resources Control Board