9:30 a.m. – 3:30 p.m.
Tribal Hall of the Rincon Band of Luiseño Indians
Valley Center, California

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*
  - *Discuss how the regulations relate to Tribes.*
- *Discuss needed tools for reaching groundwater sustainability statewide for Tribes and GSAs*
- *Update on 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
- Rural California Assistance Corporation (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

- Appendix A, Participant List
- Appendix B, Workshop Materials

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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, Attorney General for Rincon Band of Luiseño Indians, welcomed participants and offered a personal welcome from Chairman Bo Mazzetti who was not present due to be called to a meeting in Washington D.C.

Anecita Agustinez, Tribal Policy Advisor for DWR, welcomed participants and stated this workshop is part of a series of informational meetings on sustainable groundwater management planning under SGMA for Tribes and local water agencies. This is the second of three meetings covering various regions throughout the state. It will be followed by a wrap-up session during the summary of 2016 to discuss the concerns and questions raised from these workshops and 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 and participation with DWR Tribal Advisory Group. In addition, 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.
        - GSAs 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 governments, 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 medium 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 (to the GSA)? 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 the Central Valley meeting which provided the opportunity for several Tribes to explain their consultation process to the local agencies that were present.
    - We will have an opportunity to explore this further through the afternoon session agenda item. One suggestion was that each Tribe send a letter to the County stating whether they are an interested or not interested party to the GSA formation and provide a point of contact for future correspondence and notices.
    - Some GSAs may create a Tribal advisory committee where Tribes can voluntary advise/review the GSP.
    - Participation by Tribes is not mandatory, but keep in mind SGMA and GSPs will apply to Tribally owned fee land within local jurisdictions, so Tribes may need to participate in a GSA in regards to their 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 the 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 and their participation in the formations of GSAs and GSPs are voluntary, however, it is in the Tribes' best interest to participate on a voluntary basis, formally, or informally, by attending meetings and monitoring the GSA formation process...

- 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 in the creation of GSAs. 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 and DWR SGMA Tribal Advisory Group member, 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 court, for example, the 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.
        - Joint Powers Authority. 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.
        - Memorandum of Understanding (MOU). Through a 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 at 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

GSAs 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
    - 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 to receive 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 the current basin boundary modification 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 adjudicated areas or to subterranean streams.

    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 Boland-Brien, 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 appropriative 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 region funding 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 included 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 territory to allow for sustaining cultural practices. Anecita Agustinez encouraged participants to raise these issues in public comments and public forums.
        - 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 can be located in Sacramento.
- Proposition 1 includes 13 sections and 11 chapters.
  - Chapter 7 monies under IRWM will be available in approximately the next 6 months.
    - DWR is in the process of finalizing the 2016 Grant Solicitation Process with the following documents: Grant Program Guidelines, the Planning Grant Proposal Solicitation and Disadvantaged Community (DAC) Involvement Request for Proposals
  - Chapter 10 monies for sustainable groundwater management will be available later. DWR awarded approximately $6.6M in local planning grants for stressed basins in March 2016.
- 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.
  - DWR has $10 million available for groundwater planning (including GSA formation, outreach, and technical assistance) in counties with stressed basins.
    - Approximately $6.6 million of this has been awarded.
  - 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 support the involvement of DACs, economically distressed areas, and under-represented communities in IRWM planning efforts. Proposition 1 has a second 10% requirement for IRWM projects that benefit DACs.
  - SB 208 will provide for advanced payment of Proposition 1 funds for projects sponsored by nonprofits, or sponsored by (or that benefit) DACs. Cost sharing requirements (of 50 percent) are also waived for DACs.

Proposition 1 eligibility and program overview:

- Tribal eligibility:
  - Proposition 1 specifically includes, as eligible applicants, federally recognized tribes, and state tribes listed on the Native American Heritage Commission (NAHC) consultation list.
  - To be eligible for IRWM funding, Tribes must participate in the IRWM region.
- Disadvantaged community definitions under Proposition 1:
  - DAC: < 80% Median Household Income (MHI)
  - Severely Disadvantaged Community (SDAC): < 60% MHI
  - Economically Distressed Area (EDA) < 85% MHI
    - Additional criteria required.
- Proposition 1 requires 50% local cost share, but the state can waive or reduce this requirement for DAC or EDAs.
  - Specifically, SB 208 requires the state to provide advance funding (50%) for projects that meet eligibility requirements.
- Proposition 1 programs administered by DWR:
  - Chapter 7: Regional Water Reliability
    - Includes $510 Million for IRWM
  - Chapter 9: Water Recycling
  - Chapter 10: Groundwater Sustainability
    - $100 Million for local plans & projects to manage groundwater
  - Chapter 11: Flood Management
- 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.
  - 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 improving 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 and through this office, state agencies and departments have been guided on improving tribal engagement and tribal consultation practices.

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?
  - For the IRWM DAC Involvement Program, under-represented communities is not a defined term. There will be an opportunity to justify the under-representation in a community to receive funding for the Involvement Program.
  - If a Tribal Government wishes to be considered as a DAC for purposes of funding under Proposition 1, a narrative or history on lack of participation in census can be considered with an application for funding.
- 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
  - The types of projects that can be funded are listed in the specific PSP/RFPs, or in the Guidelines for future implementation funding. There are no limits on how much funding can go to any individual applicant. There are Funding Area allocations for specific areas throughout the state. That information is shown in the IRWM Guidelines.

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 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 of what 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 e good practices on coordination for the best management practices guide.

Roundtable Discussion on Tribal engagement in SGMA

The afternoon Roundtable provided opportunity for discussion and general questions 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 lack Tribal engagement. Within the submittal and review, there should be opportunity for Tribal input. If we (DWR) see no Tribal outreach, we may contact DWR's Tribal Policy Advisor for clarification and the Tribes in that particular basin. 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 good 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 as an example, 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 within the GSA formation and notification process of stakeholder 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 contract for SGMA.
- Comment: DWR's 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.
        - 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 how difficult this challenge 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?
    - 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 expresses 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 a 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 our Tribal host, 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, Chairman	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, Vice Chairman	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, Attorney General	Rincon Band of Luiseño Indians
Adam Ciotti	San Manuel Band of Mission Indians
Todd Sudmeier	San Manuel Band of Mission Indians
Diana Martinez, Councilmember	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	Rural California Assistance Corporation, 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

Appendix B. Workshop Materials

Discussion Paper
Definition of Tribal Law

Sustainable Groundwater Management Tribal Advisory Group
January 13, 2016

1.0 PURPOSE

DEFINITION OF "TRIBAL LAW"

*"To the extent authorized under federal or **tribal law**, this part applies to an Indian tribe..." SGMA, California Water Code §10720.3(b)*

"Tribal Law" should be broadly defined to include all forms of formal expressions of a tribe's sovereign will. It should include, but not be limited to:

1. Written constitutions[1]
2. Articles of Association and equivalent documents
3. Ordinances of the General Council, Tribal Council, or similar governing body
4. Resolutions of the General Council, Tribal Council, or similar governing body
5. Custom and tradition, written and unwritten[2]
6. Delegated federal authority that supplements tribal authority[3]

[1] While many tribes have written constitutions, not all do, and there is no requirement that any tribe have one. The U.S. Supreme Court has noted that "The Navajo Government has been called 'probably the most elaborate' among tribes.... The legitimacy of the Navajo Tribal Council, the freely elected government of the Navajos, is beyond question." And yet the Navajo Nation has no written constitution. *Kerr-Magee Corp. v. Navajo Tribe of Indians,* 471 U.S. 195, 197-199 (1985).

[2] In 1953 Congress enacted Public Law 280, which extended the civil jurisdiction of California's courts over individual reservation Indians (but not tribes) for ordinary civil matters (divorce, contract disputes, car accidents, child custody, etc.). P.L. 280 also preserved the role of written and unwritten tribal custom and tradition in resolving such disputes, in the absence of applicable state law: "Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in determination of civil causes of action pursuant to this section." 28 U.S.C §1360(c).

[3] e.g. Treatment as a State under the Clean Water Act

A PRIMER ON THE TYPES OF LAND IN FEDERAL INDIAN RESERVATIONS FOR GROUNDWATER SUSTAINABILITY AGENCIES

by Barona Band of Mission Indians & Rincon Band of Luiseno Indians

Background. In California title to all land was transferred from Mexico to the United States by the Treaty of Guadalupe Hidalgo in 1848. The United States immediately enacted a statute setting up a land claims commission to which those who claimed land under Mexican law could present their claims within a 2-year period to the commission and, if found to be proper, the United States would confirm the claim and issue a federal patent. The holders of Spanish and Mexican land grants and pueblos all did so, and their grants were all confirmed. However, no tribe did so because no one ever told them the commission even existed. Therefore, the time period passed and no Indian title was confirmed, even though recognized by Mexican law. In 1903 the U.S. Supreme Court held that this did not matter. Similarly, the United States negotiated 18 treaties with the tribes of California in 1851-1852. In these treaties, the tribes yielded their claims to 7/8 of the land of California to the United States, in return for specified reservations totaling about 1/8 of California. However, the U.S. Senate not only never ratified any of the 18 treaties, it concealed their existence until 1905. Therefore, between the unknown land title commission and the unratified treaties, California tribes were left entirely without any enforceable rights to any land by 1852. Their descendants were later compensated for this loss of most of California's land in 1968 at the munificent rate of 48¢ per acre.

The public domain. Aside from the confirmed Mexican and Spanish grants, all land in California thus belonged to the United States by 1852. Such federal land, not designated for any other use, was and is the public domain. Some of this original vast public domain remains today, and is administered by the Bureau of Land Management. But over the years, much of the public domain in California has been designated, by Congress or the President, for other specified uses such as: Indian reservations, military reservations, national parks, national forests, national monuments, seashores, etc., all of which are public uses serving a public purpose. In each of these other kinds of designations, the United States continues to hold fee simple title to the land in its own name, but subject to the designation. However, title is different for federal Indian reservations.

Federal Indian Reservations and Rancherias. For federal Indian reservations and rancherias, the fee title is not simply in "United States". Instead, title is held as "United States in trust for X Indian tribe". The United States owns the fee, as with other federal reservations and uses, but holds it in trust for a specified tribe. Starting mostly in the 1870's, the President and Congress made attempts to provide some tiny land base for California's otherwise landless tribes by designating specified parcels of public domain land as federal Indian reservations, with title held this way. Rancherias are not lands reserved for the public domain, but rather lands purchased by Congress for groups of otherwise landless Indians, with title held the same way: the United States holds the fee title, but in trust for a specified tribe. This is what is called "trust land", land that the United States holds in trust for a tribe. Such trust land cannot be condemned, sold, leased, conveyed, taxed, regulated, or otherwise dealt with by others unless by specific authorization by Congress. There is a process (often called "fee-to-trust") by which a tribe can now take a piece

of fee land and have the United States accept it into trust as new or additional trust land for that tribe, but the process is onerous and difficult, and does not always succeed, especially if the parcel is not on or contiguous to a reservation or rancheria.

Trust Allotments. Many reservations now remain as they were established: blocks of land whose title is held in trust for the tribe by the United States. However, starting in 1887, many, but not all, reservations went through a process called "allotment" by which larger parcels of tribal trust land were subdivided into parcels as small as 5 acres, and allocated to individual Indians. These parcels are known as "allotments" by which the title to the individual parcel stayed in trust, but for the individual Indian, not the tribe. Such allotted trust land is different from un-allotted tribal trust land. Allotted trust land can be sold so that the buyer receives fee title. It can be condemned. It can be more easily leased. The Indian owner (called the "allottee") can also take it out of trust and receive a fee patent. When such land passes out of trust and into fee, it is subject to state and local taxation and, in many but not all cases, is subject to state and local regulation (zoning, land use, county ordinances regarding wells, etc.). Reservations that have been allotted typically are a patchwork of (1) un-allotted tribal trust land, (2) allotted trust land, and (3) fee land. However, the boundaries of the reservation are not affected by allotment or issuance of a fee patent. Each reservation is different. Outsiders will simply have to inquire to see if a particular reservation was ever allotted and, if so, what the status of individual parcels on it are. In addition, a very few allotments to individual Indians were made from lands of the public domain, known as "public domain allotments", and not within any reservation or rancheria. Some have passed into fee, but a few remain in trust.

Tribal governments. Indian tribes are not just voluntary social organizations of people of Indian descent, like the Knights of Columbus. Membership is usually limited to those who can show direct descent from those whose names appear on a "base roll" of members of the tribe, often from the 19th Century, and other factors. Federally-recognized tribes (there are over 500 in the official list) are governments that exercise normal sovereign powers of self-government on the reservation or rancheria over their people and over at least all trust land on the reservation and, sometimes, over fee land on the reservation. This includes misdemeanor criminal jurisdiction and the kinds of local powers commonly exercised by counties, such as zoning and land use, environmental controls, and control over wells and groundwater, as well as federally-delegated authority. Many tribes, especially in remote areas, have been exercising effective sustainable groundwater management on their reservations or rancherias for decades. Under federal law, state law and county ordinances do not apply to a tribe on its reservation or rancheria, and cannot be enforced against tribes, except where Congress has specifically said so. Although tribes are beneficial owners of trust land, they are also the local governments over the reservations and rancherias. The federal government, and state and local governments, must relate to tribal governments on a government-to-government basis, as well as landowners. Tribes themselves cannot be GSAs, but can choose to participate in GSAs by joint powers agreements MOUs, and similar arrangements. Such voluntary participation benefits all who rely on the basin. Some tribes may choose not to participate at all. Others may choose varying degrees of participation, depending on their own situations.

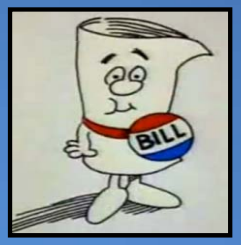
SGMA Update

Department of Water Resources

Southern Region Office

April 28, 2016

The Sustainable Groundwater Management Act of 2014



- AB 1739: Dickinson
- SB 1168: Pavley
- SB 1319: Pavley

KEY INTENDED OUTCOMES

- Establish effective local governance to protect and manage groundwater basins
- For Local Agencies to achieve sustainable management of groundwater basins
- If local or regional agencies are not able to manage groundwater sustainably, the State will intervene until local agencies can implement sustainable management

Sustainable Groundwater Management Overview

Framework

- Applicability
- Definitions

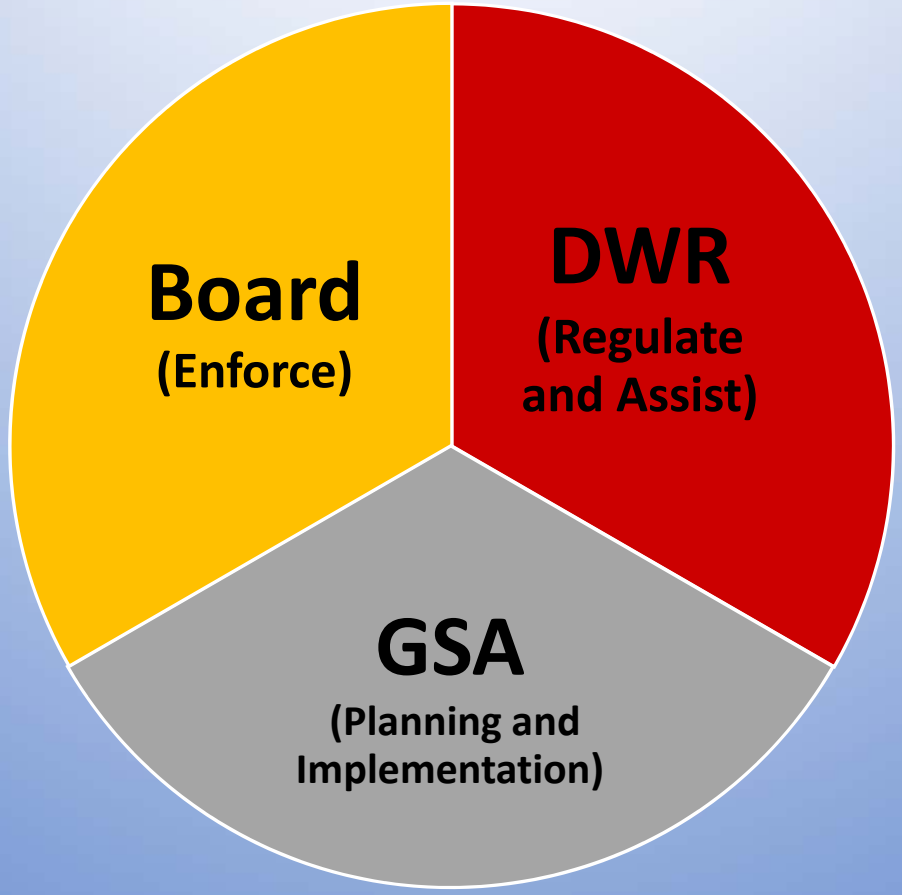
Local's Role

- Establish GSA
- Powers & Authorities
- Sustainability Plans
- Deadlines

State's Role

- Define Rules
- Technical & Planning Assistance
- State Evaluation and Assessment
- State Intervention

General Roles and Responsibilities

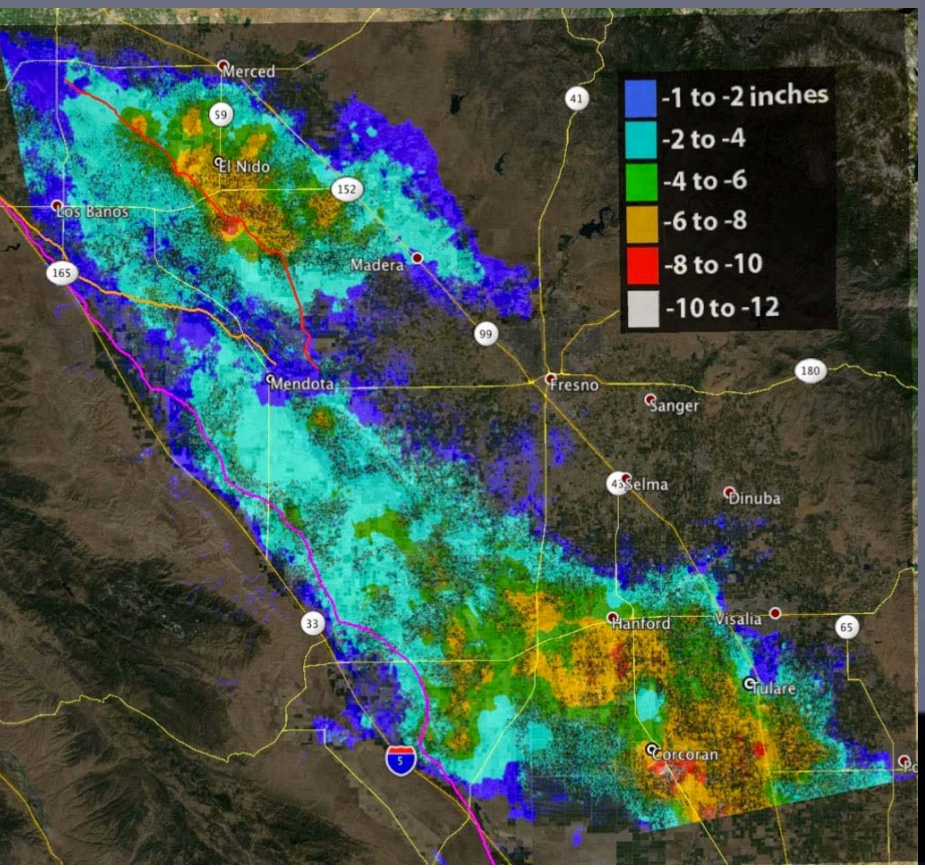


Groundwater Sustainability

Undesirable Results:
Significant and unreasonable…

Lowering of Groundwater Levels	Reduction of Groundwater Storage	Seawater Intrusion
Water Quality Degradation	Land Subsidence	Depletions of Surface Water

Ground Subsidence



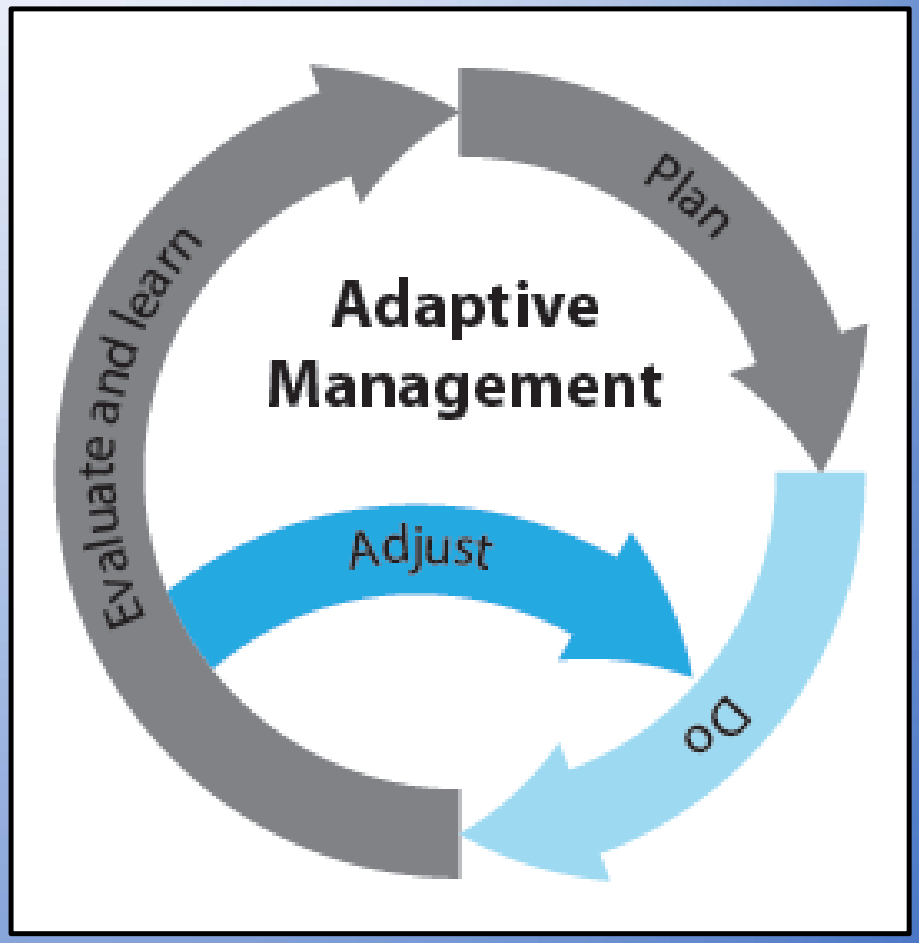
Requires that a groundwater sustainability plan (GSP) be adopted for High and Medium groundwater basins

- **Limited to "high & medium priority basins"**
  127 out of 515 basins in the state
- **Adjudicated basins are exempt, except for minimal reporting**
- **"Low & very low priority" basins are exempt, but are encouraged to adopt plans.**

Basin Prioritization Results
http://water.ca.gov/groundwater/casgem/basin_prioritization.cfm

GSP General Principals (Article 1)

- Must achieve sustainability goal for an entire basin in 20 years
- Cannot adversely affect an adjacent basin
- Meet a substantial compliance standard
- Provide a description of basin-wide governance
- Establish timeline and priority for filling data gaps
- Implement an adaptive management process (as necessary)



SGMA Milestones for Success

Groundwater Sustainability Agencies

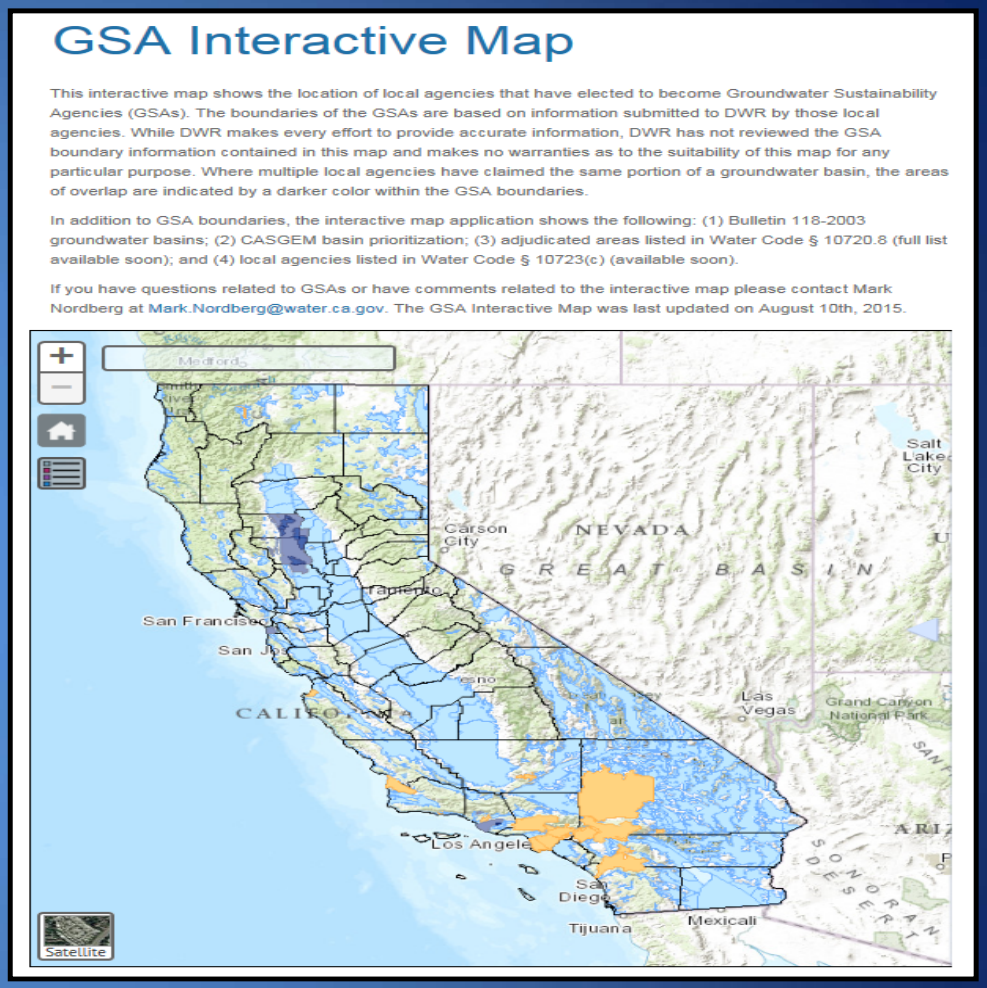
- GSA Formation by June 30, 2017
- Local agencies can form GSAs
- Non-local agencies can partner GSAs

Groundwater Sustainability Plans

- January 31, 2020 for critically overdrafted basins
- January 31, 2022 for all other high and medium priority basins
- Basins with multiple GSPs must coordinate through agreements

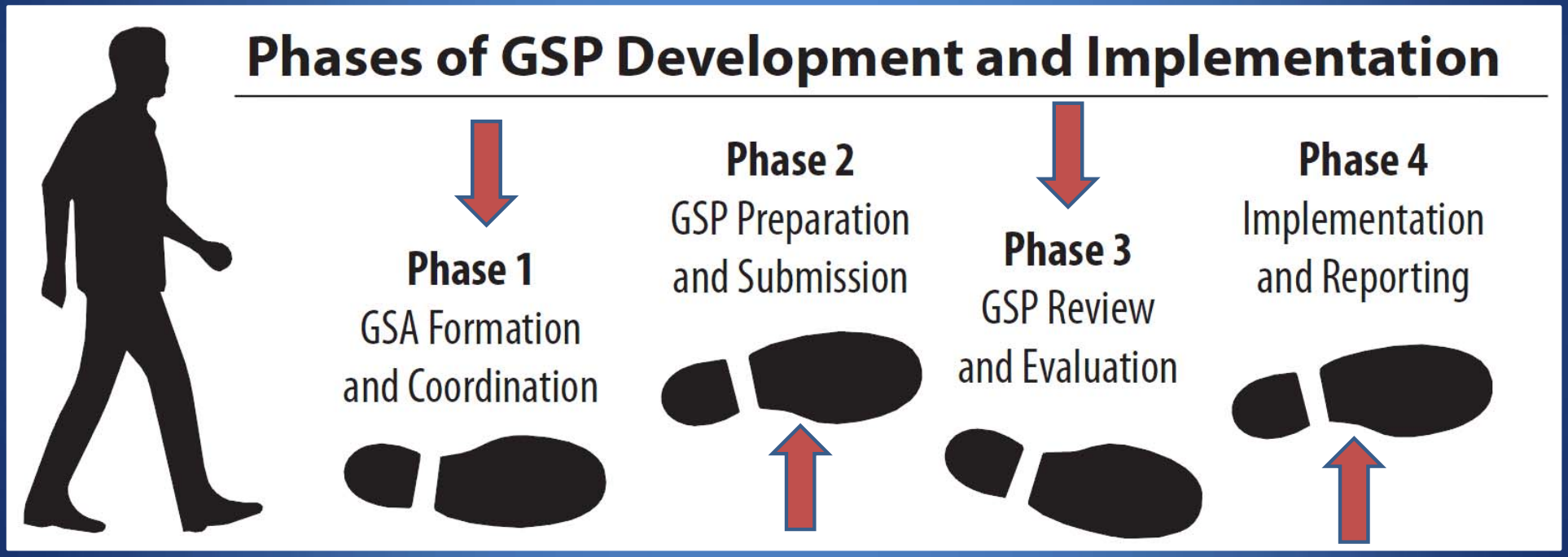
Groundwater Sustainability

- 20-year implementation period
- 50-year planning horizon



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

Opportunities for Collaboration and Coordination



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INFORMATIONAL MEETING ON THE SUSTAINABLE GROUNDWATER MANAGEMENT PROGRAM

Funding Opportunities Under Proposition1 for IRWM and Groundwater

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RINCON TRIBAL HALL

APRIL 28, 2016

PROPOSITION 1 OVERVIEW

- Sections 1-7
  - Reallocates Statewide Bond Costs from prior bonds to Prop 1
  - Redirects unused funds from prior bonds to Prop 1
  - Repealed 2009 Water Bond
- Section 8
  - "the good stuff"
  - Chapters 1-4 – General items applicable to entire bond (definitions, general provisions)
  - Chapter 12 Fiscal Provision
- Sections 9-13
  - Various legislative "clean up" items

PROPOSITION 1 PROGRAMS ADMINISTERED BY DWR

- Chapter 7 Regional Water Reliability
  - $510M Integrated Regional Water Management (IRWM)
  - $100M Water conservation & water use efficiency (WUE)
- Chapter 9 Water Recycling
  - $100M Desalination & advanced treatment technology
- Chapter 10 Groundwater Sustainability
  - $100M Local plans & projects to manage groundwater
- Chapter 11 Flood Management
  - Administered by DWR and the Central Valley Flood Protection Board
  - $295M Reduce risk of levee failure & flooding in the Delta
  - $100M Statewide flood management

ANTICIPATED SCHEDULE

- DWR just completed a public review process of the draft documents for public review
  - Guidelines
  - Planning Grant Proposal Solicitation Package
  - Disadvantaged Community Involvement Request for Proposal
- Issue final documents April, 2016
- Mid-2016 – Administer DAC Involvement and Planning Grants
- Implementation Grant Program/DAC Project funding to follow

PROPOSITION 1 IRWM – DRAFT PROPOSAL

Planning Grants

- $5M available
  - Taken from Funding Area allocations
  - Preference for new plans
- Develop new IRWM Plans
  - $1M grant cap
- Improve existing IRWM Plans
  - $250K grant cap

Implementation Grants

- Approximately $418M available
  - Including at least $51M for projects that directly benefit DACs
- Solicitation no earlier than 2017
- Solicitation options being considered

OVERVIEW OF SENATE BILL 208

- Within 90 days of grant award (execution) RWMG provides DWR with a project list:
  - Non-profit organizations, DACs, or benefiting DACs
  - Grant award is <$1,000,000
  - Project description, budget, & schedule
- Within 60 days of receipt, DWR:
  - Advance payment of 50% of the grant award
  - May adopt additional requirements
    - Detailed in draft guidelines
- Non-interest bearing account
- Spend within 6 months
- Return unused funds
- Quarterly expenditure reports

CHAPTER 10 GROUNDWATER SUSTAINABILITY

- $100 Million for projects that develop and implement groundwater plans and projects in accordance with groundwater planning requirements in Water Code Section 10000
- Competitive grant program
  - 50% Cost share, waived or reduced for projects that directly benefit DAC or EDA
  - 10% allocated to projects serving severely DAC
- Up to $10 Million – Counties with Stressed Basins
  - Develop ordinances and plans that protect basins and their beneficial uses and help facilitate basin-wide groundwater management
- $83 Million
  - Local Agencies
  - Groundwater sustainability governance and planning

CHAPTER 10 GROUNDWATER SUSTAINABILITY

Counties with Stressed Basins

- $10M available
- $7M in requests received
- Anticipate draft awards in the immediate future
- Applications from the Southern California
  - San Diego County, $250,000

Sustainable Groundwater Plans

- Solicit once SGP regulations adopted
  - June 1, 2016 (SGMA Deadline)
- Competitive grant program
- Development of SGPs or related activities
- Seeking input on what should be considered for funding

PROPOSITION 1
WATER USE EFFICIENCY PROGRAMS

Turf & Toilet Rebates

- Total of $24M available for turf, with target of 50% of funds to DACs
  - $12M targeted to SJV
  - $12M targeted Statewide
- Total of $6M available for High Efficiency Toilets (HET)
  - Target – 50% of funds to DACs

Turf & Toilet Direct Installs

- In partnership with Department of Community Services and Development (CSD) for HET installs
  - $6 million targeted to DACs, in conjunction with CSD weatherization program
- Includes partnership with California Conservation Corps to replace turf
  - $1 million targeted to DACs, underserved, and drought impacted communities in San Joaquin Valley for turf replacement
  - Replace turf at public facilities and provide job training for at risk youth

PROPOSITION 1
WATER USE EFFICIENCY PROGRAMS

Ag WUE Grants

- $30M available
- Must provide measurable benefits to the State
  - Implementation Projects
    - Maximum grant = $3M
  - Other Projects: Technical Assistance, Research and Development, or Training, Education, and Public Outreach
    - Maximum grant = $300,000
- Final guidelines nearing release

CalConserve Loans

- $10M, split evenly between the categories below, available to local agencies for:
  - Pilot project for WUE upgrades to eligible residents at no upfront costs
  - Low-interest loans to customers to repair or replace cracked or leaking water pipes
- Maximum Loan = $3M
  - 20-25 year repayment
  - 0% interest; some debt forgiveness
- Final guidelines nearing release

PROPOSITION 1 FUNDING OPPORTUNITIES

Desalination

- Building on Prop 50 program:
  - Planning, design, and construction of water desalination facilities for both brackish and ocean water
  - Pilot, demonstration, and research projects
- Tentative Schedule:
  - Release draft guidelines/public comment period – Winter 2016
  - Release final guidelines/PSP and start solicitation – Spring 2016
  - Announce grant awards – Summer 2016

Flood Management

- $100M Statewide Flood Management
- Future program
- Current focus on completing Props 84 and 1E funding programs

SECTION 8

Chapter 5 - Clean & Safe Drinking Water

- $260M Small community wastewater
- $260M Disadvantaged Community Drinking Water
- Administered by SWRCB

Chapter 6 - Watershed Restoration & Protection

- $515M Watershed restoration in designated areas
- $475M State environmental restoration commitments
- $305M Statewide watershed restoration
- $200M Projects to increase water flowing in rivers and streams
- Administered by: Natural Resources Agency, various conservancies, Wildlife Conservation Board, and Department of Fish and Wildlife

SECTION 8

Chapter 5 - Clean & Safe Drinking Water

- $260M Small community wastewater
- $260M Disadvantaged Community Drinking Water
- Administered by SWRCB

Chapter 6 - Watershed Restoration & Protection

- $515M Watershed restoration in designated areas
- $475M State environmental restoration commitments
- $305M Statewide watershed restoration
- $200M Projects to increase water flowing in rivers and streams
- Administered by: Natural Resources Agency, various conservancies, Wildlife Conservation Board, and Department of Fish and Wildlife

SECTION 8

Chapter 7 - Regional Water Security

- $510M Integrated Regional Water Management (IRWM)
- $100M Water conservation & water use efficiency
  - Both administered by DWR
- $200M Multi-benefit stormwater management
  - Administered by SWRCB

Chapter 8 - Statewide System Operation

- $2,700M Water Storage Investment Program (WSIP)
- Public benefits associated with water storage
  - Administered by California Water Commission

SECTION 8

Chapter 9 Water Recycling

- $625M Water recycling & advanced treatment technology
  - Administered by SWRCB
- $100M Desalination
  - Administered by DWR

Chapter 10 Groundwater Sustainability

- $800M Prevention & cleanup of groundwater pollution
  - Administered by SWRCB
- $100M Local plans & projects to manage groundwater
  - Administered by DWR

SECTION 8

Chapter 11 - Flood Management

- $395M to reduce risk of levee failure & flooding in the Delta and address statewide flood management projects and activities
  - Administered by DWR and the Central Valley Flood Protection Board

ELIGIBLE APPLICANTS

- Public Agencies
- Nonprofit Organizations
  - 501.(c)(3) qualified to do business in California
- Federally recognized Indian Tribes
- Indian Tribes listed on NAHC consultation list (non-federally recognized)
- Public Utilities
- Mutual Water Companies

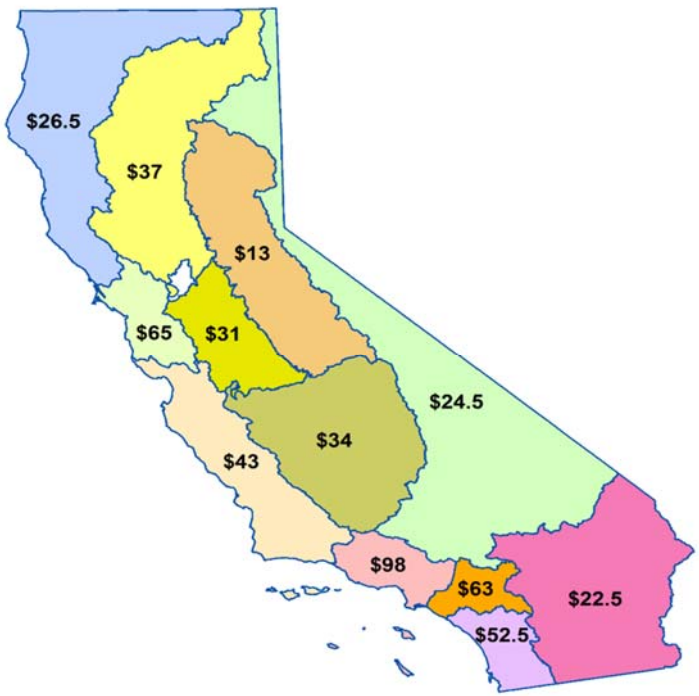
SELECTED DEFINITIONS

- Disadvantaged Community (DAC) = 80% Median Household Income (MHI)
- Severely Disadvantaged Community (SDAC) = 60% MHI
- Economically Distressed Area (EDA) = <85% MHI
  - Municipality – Population ≤20,000
  - Rural County
  - Reasonable isolated/divisible segment of large municipality with population ≤20,000
  - With one or more:
    - Financial hardship
    - Unemployment rate at least 2% higher than State average
    - Low population density
  - http://www.water.ca.gov/irwm/grants/resources_eda.cfm

INTEGRATED REGIONAL WATER MANAGEMENT

PROPOSITION 1 IRWM GENERAL PURPOSE

- Help water infrastructure systems adapt to climate change
- Provide incentives for collaboration on managing water resources and setting water infrastructure priorities
- Improve regional water self-reliance

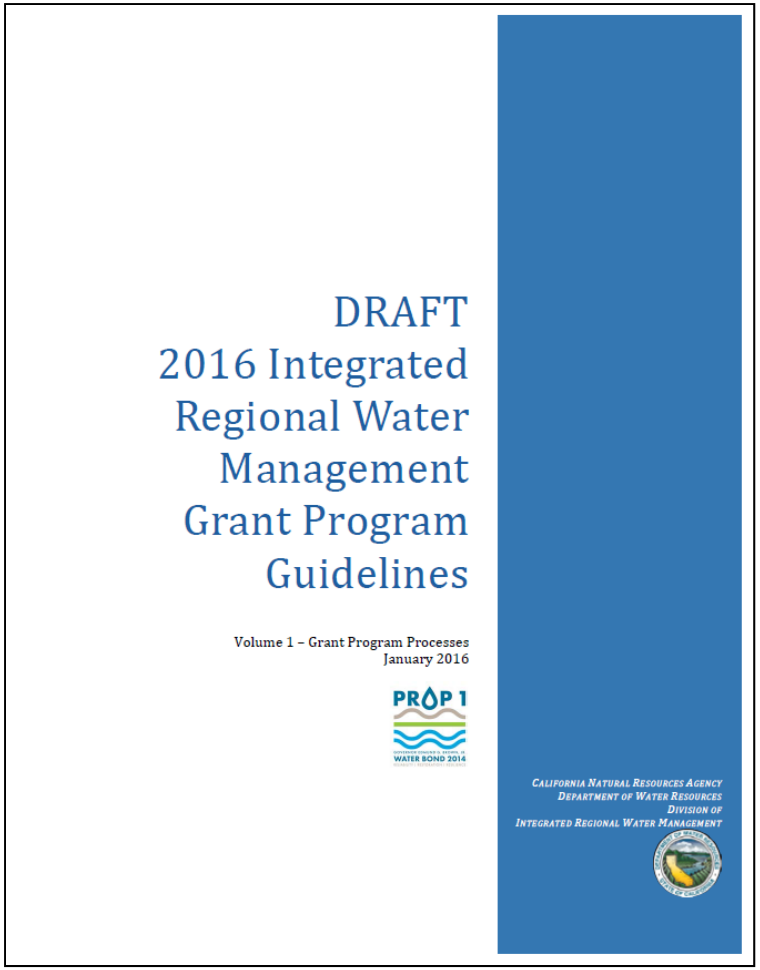


PROPOSITION 1 IRWM FUNDING OVERVIEW

- $5M for Planning Grant Program
- $102M for Disadvantaged Community Assistance
  - $51M (At least 10%) - Ensure involvement of DACs, EDAs, or underrepresented communities within regions
  - $51M (At least 10%) - Projects that directly benefit a DAC
- $367.3M for Implementation Grant Program
  - In addition to DAC projects
  - Total available = $418.3M
  - Future program activity
- $35.7M Program delivery and bond administration cost

2016 IRWM GRANT PROGRAM GUIDELINES

- Volume 1 – Program Processes
  - Updated for Prop 1 and recent legislation
  - Freshened up
- Volume 2 – IRWM Plans
  - Plan Standards
  - Guidance for Plan Standards
  - Plan Review Process
  - Regional Acceptance Process


DRAFT
2016 Integrated Regional Water Management Grant Program Guidelines

Volume 1 – Grant Program Processes
January 2016

PROP 1
WATER BOND 2014

CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
DIVISION OF
INTEGRATED REGIONAL WATER MANAGEMENT

SELECTED CHANGES – 2016 GUIDELINES

- Mandated 50% Local Cost Share
  - Waive or reduce for DAC or EDAs
- New Eligible Applicants
  - Federally recognized Indian Tribes
  - Indian Tribes listed on NAHC consultation list (non-federally recognized)
- Program Preferences
  - Projects that leverage funding or produce the greatest public benefit
  - Special consideration for new or innovative technology or practices
  - Projects that cover a greater portion of the watershed
  - Multi-benefit projects
- Statewide Priorities
  - Aligned with California Water Action Plan

CHANGES TO IRWM PLAN STANDARDS

Changed

- Regional Description
- Objectives
- Resource Management Strategies
- Project Review Process
- Plan Performance and Monitoring
- Relation to Local Water Planning
- Relation to Local Land Use Planning
- Climate Change

Unchanged

- Governance
- Integration
- Impact and Benefit
- Data Management
- Finance
- Technical Assistance
- Stakeholder Involvement
- Coordination

CHANGES TO IRWM PLAN STANDARDS

Climate Change

- Address adaptation and mitigation
  - Regional Description
  - Objectives
  - Regional Management Strategies
  - Project Review Process
  - Plan Performance Monitoring
  - Relation to Local Water Planning
  - Relation to Local Land Use Planning
  - Climate Change

AB 1249

- Address certain contaminants in IRWM plan and project selection
  - Regional Description
  - Project Review Process

RECENT LEGISLATION REFLECTED IN GUIDELINES

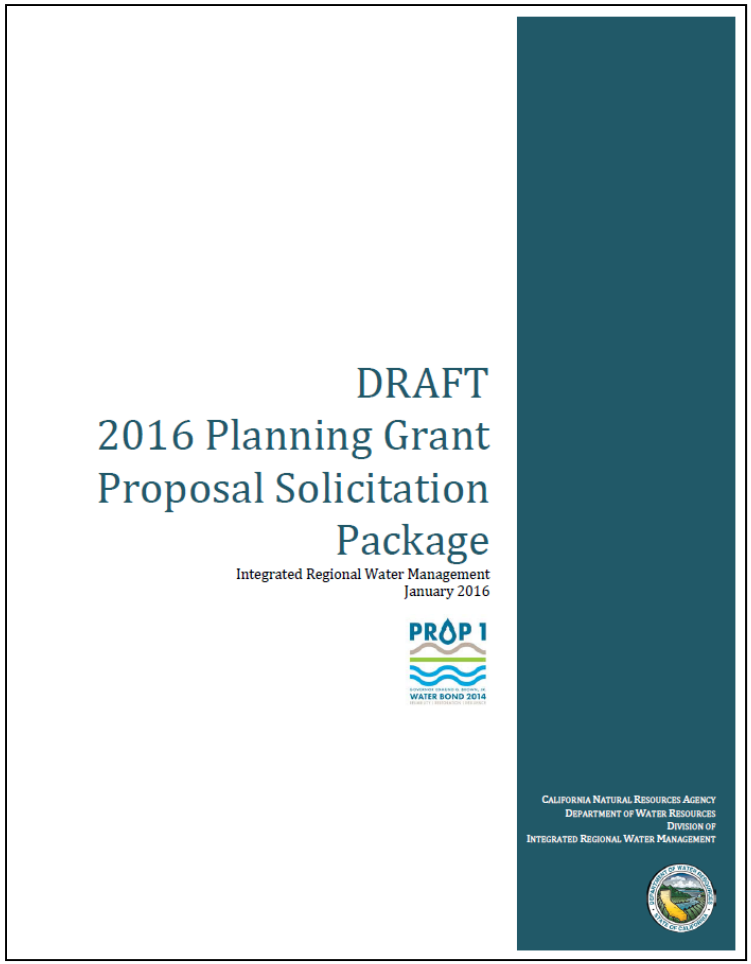
- AB 1249 (2013-2014) – Water Code §10541(e)(14)
  - Address nitrate, arsenic, perchlorate, or hexavalent chromium contamination in IRWM plans
  - Include projects in grant application or explain why not included
  - DWR shall consider projects that address these contaminants, including small DAC projects (<10,000 year-round population)

- SB 985 (2013-2014) – Water Code §10562(b)(7)
  - Stormwater projects consistent with Stormwater Resources Plan
  - Stormwater Resource Plans incorporated into IRWM Plans

- SB 208 (2015-2016) Water Code §§10551-10552
  - Advanced Payment to:
    - Non-profit organizations, DACs, or projects benefiting DACs
    - Grant award <$1,000,000

PLANNING GRANT SOLICITATION

- $5M Available
- Competitive grant program
  - New Plan $1M
  - Update Existing Plan $250K
- Preference in funding new IRWM plans
  - Scoring system and grant cap
- Those with active IRWM Planning agreements at the time of application are not eligible

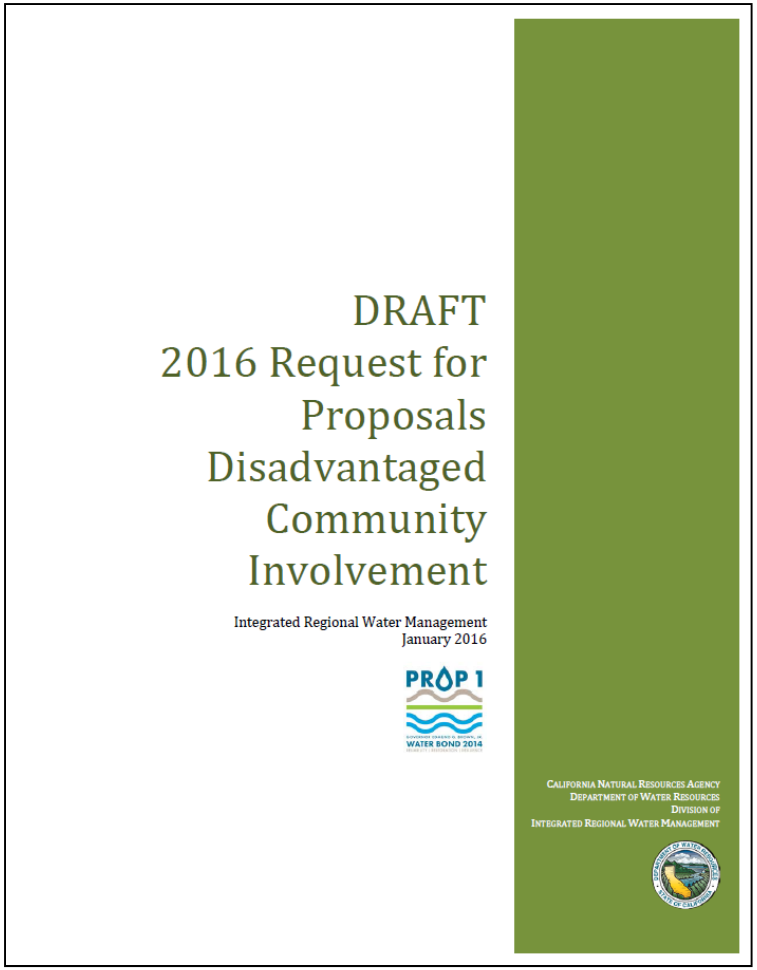

DRAFT
2016 Planning Grant Proposal Solicitation Package
Integrated Regional Water Management
January 2016

PROP 1
WATER BOND 2014

California Natural Resources Agency
Department of Water Resources
Division of
Integrated Regional Water Management

DAC INVOLVEMENT REQUEST FOR PROPOSALS

- At least $51M for the involvement of DACs, EDAs, & underrepresented communities in IRWM planning efforts
  - 10% of each Funding Area
  - Non-competitive
  - 2 year performance period
- Coordinate with SWRCB Office of Sustainable Water Solutions


DRAFT
2016 Request for Proposals Disadvantaged Community Involvement

Integrated Regional Water Management
January 2016

PROP 1
WATER BOND 2014

California Natural Resources Agency
Department of Water Resources
Division of
Integrated Regional Water Management

PROPOSITION 1 IRWM IMPLEMENTATION GRANT PROGRAM

General Overview

- $418.3M available
  - General IRWM Projects – $367.3M
  - Projects that directly benefit DAC – At least $51M
- Solicitation Considerations
  - One versus two rounds
  - Timing

Eligible projects include, but not limited to:

- Water reuse and recycling
- Water-use efficiency and water conservation
- **Surface and underground water storage**
- **Water conveyance facilities**
- Watershed protection, restoration, and management projects
- **Conjunctive use**
- **Water desalination projects**
- Decision support tools
- **Improvement of water quality**
- **Stormwater resource management**

FUNDING AREA ALLOCATIONS IMPLEMENTATION GRANT PROGRAM

Funding Area	Allocation [1)]	10% DAC Projects	General Projects
North Coast	$26,500,000	$2,650,000	$19,345,000
San Francisco	$65,000,000	$6,500,000	$47,450,000
Central Coast	$43,000,000	$4,300,000	$31,390,000
Los Angeles	$98,000,000	$9,800,000	$71,540,000
Santa Ana	$63,000,000	$6,300,000	$45,990,000
San Diego	$52,500,000	$5,250,000	$38,325,000
Sacramento	$37,000,000	$3,700,000	$27,010,000
San Joaquin	$31,000,000	$3,100,000	$22,630,000
Tulare/Kern	$34,000,000	$3,400,000	$24,820,000
Lahontan	$24,500,000	$2,450,000	$17,885,000
Colorado	$22,500,000	$2,250,000	$16,425,000
Mountain Counties	$13,000,000	$1,300,000	$9,490,000

1) Any planning grant awards would be taken from relevant Funding Area

SUSTAINABLE GROUNDWATER MANAGEMENT

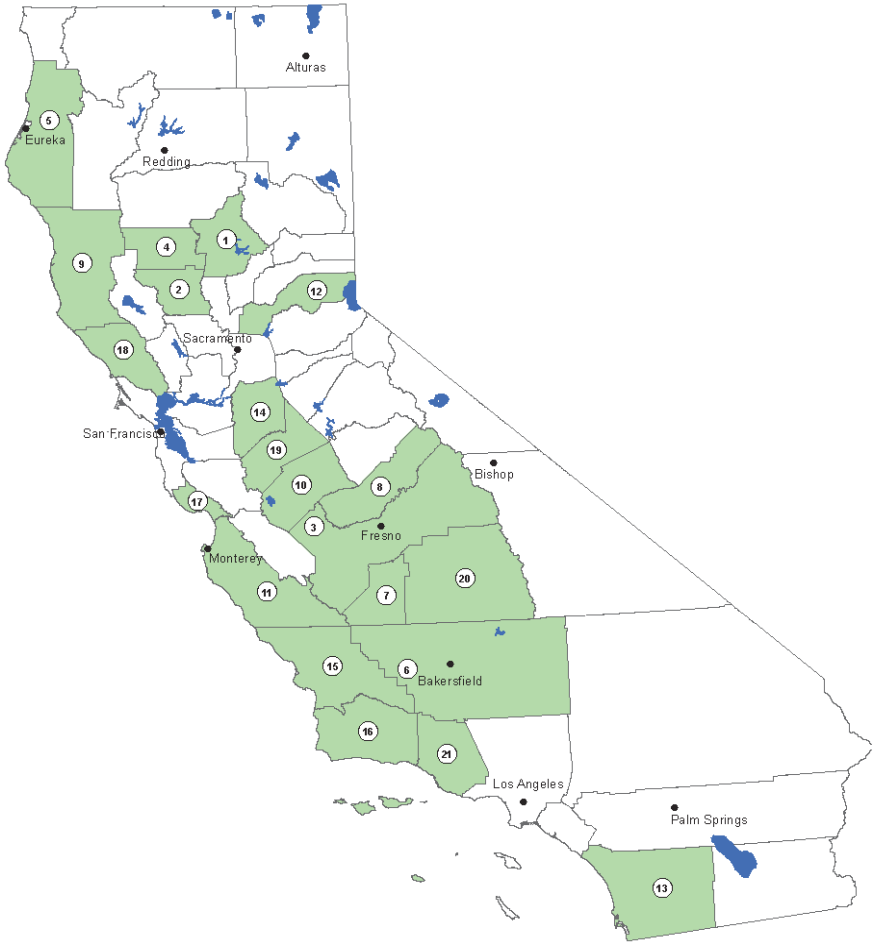
IRWM GROUNDWATER ELIGIBILITY ISSUES

- Water Code §79741.(b)
  - A local agency that does not prepare, adopt, and submit its groundwater plan… **is ineligible to apply for funds**… until the plan is prepared and submitted….
  - Does not apply to:
    - Water replenishment district
    - Local agency that serves or has authority to manage an adjudicated groundwater basin
- Water Code §10000 Plans
  - Groundwater Sustainability
    - Alternative Measures 2017
    - Critical Overdraft 2020
    - High & Medium Priority 2022
      - Groundwater Management Plan must have been adopted by 1/1/2015
  - Groundwater Management
    - Low & Very Low Priority
- CASGEM

CHAPTER 10 GROUNDWATER SUSTAINABILITY

- $100M for projects that develop and implement groundwater plans and projects in accordance with groundwater planning requirements in Water Code §10000
- Competitive grant program
  - 50% cost share
    - Waive/reduce for projects that directly benefit DAC or EDA
  - 10% allocated to projects serving SDAC

CHAPTER 10 GROUNDWATER SUSTAINABILITY



- Counties with Stressed Basins
  - Develop ordinances and plans that protect basins and their beneficial uses and help facilitate basin-wide groundwater management
  - March 18, 2016 awarded $6.7M to 21 Counties

CHAPTER 10 GROUNDWATER SUSTAINABILITY

- Sustainable Groundwater Planning Grant Program
  - $86.3M available
- Solicit once Sustainable Groundwater Plan regulations are adopted
  - June 1, 2016 (SGMA Deadline)
- Competitive grant program
- Development of SGPs or related activities

SCOPING SUSTAINABLE GROUNDWATER PLANNING GRANT PROGRAM

- Will conduct public scoping meetings later in 2016
- Seeking input on how to structure program:
  - What should be considered for funding?
    - Plan development
    - Actions related to sustainable groundwater planning/management
      - Wells, data management, modeling, etc.
  - What should not be considered for funding?
  - Limited funding to support a robust construction grant program
  - Timing of solicitation
  - Grant caps – Maximum and Minimum

Thank you

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HTTP://WWW.WATER.CA.GOV/FUNDING/

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