

**ATTORNEYS' COMMITTEE NARRATIVE STATEMENT
ACCOMPANYING DRAFT JOINT EXERCISE OF POWERS AGREEMENT
ESTABLISHING THE EASTERN SAN JOAQUIN GROUNDWATER AUTHORITY**

August 9, 2016

Preamble

The Sustainable Groundwater Management Act (“**SGMA**”) became effective on January 1, 2015. SGMA requires the establishment of one or more groundwater sustainability agencies (“**GSAs**”) and the development and implementation of one or more groundwater sustainability plans (“**GSPs**”) for each groundwater basin categorized by the California Department of Water Resources as “high” or “medium” priority. The Act further provides that, in the event of failure of local agencies to comply with the requirements of SGMA, the State of California may intervene in the management of groundwater.

The San Joaquin Valley Groundwater Basin, Eastern San Joaquin Subbasin, California Department of Water Resources Basin No. 5-22.01 (“**Basin**”) has been categorized by DWR as a high priority basin and is therefore subject to SGMA. Under the auspices of the Eastern San Joaquin Subbasin Sustainable Groundwater Management Act Working Group (“**Working Group**”) a number of public entities and other organizations have been working cooperatively to develop an overall strategy for SGMA implementation in the Basin. The Working Group recently requested that the group of attorneys representing Working Group participants (“**Attorneys Committee**”) prepare an initial draft of a Joint Exercise of Powers Agreement for presentation to the Working Group. The Working Group further requested that the Attorneys Committee identify key policy issues arising from the JPA Agreement.

The initial draft of the JPA Agreement establishing the Eastern San Joaquin Groundwater Authority (“**Authority**”) is attached. The purpose of this document is to (1) summarize the goals of the JPA Agreement, and (2) describe the key policy issues to be considered in connection with discussion and approval of the proposed JPA Agreement.

Intention of the JPA Agreement

The Attorneys Committee agreed on several things regarding the intention of the Authority formed by the JPA Agreement:

- 1) The Authority is intended to be a group of entities that have elected (or intend to elect) to become GSAs, all with the authority granted to them by SGMA to become GSAs.
- 2) The initial intention of the Authority is to allow the various entities to work together to mutually develop and ultimately adopt a GSP for the entire Basin.
- 3) Funding for preparation of the GSP will come from various sources, including San Joaquin County Zone 2 funding, State of California grant funding, and to the extent

necessary, funding by Authority members in amounts to be determined by the Board of Directors.

- 4) The JPA Agreement allows maximum flexibility for implementation of the GSP:
 - a. To the extent the members agree, the JPA Agreement allows the Authority to undertake implementation of the GSP within the boundaries of any Member.
 - b. Alternately, the JPA Agreement allows each Member to opt out, and independently implement the GSP within its boundaries.
- 5) The JPA Agreement allows any Member to withdraw at any time.

Key Policy Issues

1) Whether to establish the Authority as a separate public entity. Under California law, a joint powers authority may be organized and established as a public entity separate from its members or it may be organized purely as a contractual arrangement. Article 3.3 of the JPA Agreement provides in part: “The Authority will not be a separate public entity. However, the Members recognize that the Authority may, in the future, desire to borrow funds and implement projects for purposes of SGMA implementation and the Members reserve authority to amend this Agreement to provide for the establishment of the Authority as a separate public entity.” The Attorneys Committee believes that this “step-by-step” approach is appropriate given the start-up nature of the Authority and the need to build trust among Members.

2) How to allocate voting power among Members of the Authority. The draft JPA Agreement gives every Member one vote and does not provide for weighted voting based on the Member’s size (acreage), or population demographics or groundwater extraction. The Attorneys Committee discussed the option of utilizing a weighted voting by acreage or groundwater extraction approach but ultimately decided that such an approach might cause smaller Members to feel disenfranchised and thus choose not to participate in the Authority. The Attorney’s Committee believes that, at this early stage in the Authority’s SGMA implementation process, it is important to have as much participation as possible within the Basin. Ultimately, it may be important to align voting power with financial contribution so this is an issue that may have to be re-visited in the future.

3) Whether to provide for supermajority voting on certain matters. Article 4.7 of the draft Agreement provides that certain actions will require a two-thirds affirmative vote by members of the Authority Board of Directors present. The Attorneys Committee discussed the pros and cons of supermajority voting and ultimately decided to include a provision requiring a supermajority affirmative vote for a relatively small number of actions. The policy group should review this provision and determine whether, from a policy perspective, a supermajority vote requirement should be included and, if so, as to what actions.

4) How to allocate financial contributions among Members. Article 5.1 of the JPA Agreement provides in relevant part: “Members shall share in the general operating and administrative costs of operating the Authority in accordance with the percentages determined by the Authority Board of Directors.” Under Article 4.7, a two-thirds vote of the Authority Board

of Directors will be required to approve the applicable percentages. The Attorneys Committee discussed various possible approaches to this question including an acreage-based or groundwater extraction allocation, formula. Ultimately, it was decided to leave this important issue to discussion and action by the Authority Board of Directors.