



COUNTY OF COLUSA

COMMUNITY DEVELOPMENT DEPARTMENT, WATER RESOURCES DIVISION
100 Sunrise Boulevard Suite A, Colusa, CA 95932 | 530-458-0719

COLUSA COUNTY GROUNDWATER COMMISSION

Darrin Williams, Dist. 1 | Deke Dormer, Dist. 2 | Matt LaGrande, Dist. 3 | Tom Charter, Dist. 4 | Jeff Moresco, Dist. 5

Meeting Agenda

Location: Colusa Industrial Properties Conference Room
100 Sunrise Blvd., Colusa, CA 95932

Date: November 28, 2018

Time: 10:00-Noon

** Indicates Action Item*

1. CALL TO ORDER

- a. Pledge of Allegiance
- b. Introductions
- c. Roll Call
- d. *Approval of Minutes from the July 11, 2018 Meeting
- e. *Acceptance of Agenda
- f. Period of Public Comment

Any person wishing to address the Commission on any item not on today's Agenda may do so at this time. The Commission will not be making a decision or determination on items brought up during Public Comment.

2. DISCUSSION/ACTION ITEMS (*action item)

- a. Review Draft Groundwater commission Update to be Presented to Board of Supervisors
- b. * Set 2019 Meeting Schedule
- c. Discussion; Outreach meetings, collaboration with Colusa Groundwater Authority
- d. Discussion; Resolution in support of Surface Water Storage

3. UPDATES AND REMINDERS

- a. Staff Report; SGMA Activities
- b. Legislative Update
- c. Reminder; Commissioner Terms of Office
- d. Commissioner Comments and Updates
- e. Items for Next Agenda
 - i. Election of Officers (January)
 - ii. Other

4. ADJOURNMENT

Next Regular meeting date: **To be determined under Agenda item 2.b**

TO THOSE WHO PARTICIPATE IN COMMISSION PROCEEDINGS: California Government Code Section 84308 requires you to disclose campaign contributions to Groundwater Management Commissioners if they amount to \$250 or more and were made within the last twelve months. Please announce your applicable campaign contributions when you speak. Any disabled person needing special accommodation to participate in the Commission proceeding is requested to contact the Colusa County Water Resources Division prior to meeting and arrangements will be made to accommodate you.20



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Meeting Minutes

Location: Colusa Industrial Properties Conference Room
100 Sunrise Blvd., Colusa, CA 95932

Date: July 11, 2018

Time: 10:00 a.m. - Noon

CALL TO ORDER

Vice-Chair Moresco opened the meeting at 10:06 a.m. The meeting began with the Pledge of Allegiance, a Roll Call of Officers and introductions of others in attendance.

Introductions

Staff and public in attendance:

Mary Fahey, Colusa County Water Resources Manager
Tana Loudon, Colusa County Community Development Department
Elaine Rominger, Arbuckle
Winston Peterson, Arbuckle
Perry Charter, T&P Farms
Oscar Serrano, Colusa Indian Community Council
Michael Doherty, Chamisal Creek Ranch LLC

Roll Call

Commissioners Present: Charter, Dormer, Moresco and LaGrande
Commissioners Absent: Williams

Approval of Minutes from the April 4, 2018 Meeting

Motion: Commissioner Dormer moved to approve the April 4, 2018 Meeting minutes. Commissioner LaGrande seconded. The motion passed 4-0 (1 absent).

Acceptance of Agenda

Motion: Commissioner LaGrande moved to accept the agenda. Commissioner Dormer Seconded. The motion passed 4-0 (1 absent).

Period of Public Comment

Vice-Chair Moresco opened the Period of Public Comment.



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Ms. Elaine Rominger introduced herself and stated that she had received a release from the Almond Alliance yesterday. She stated that no matter what our plans are or what we have in place, the State Water Resources Control Board can still do a water grab. She added that she just wanted everyone to be aware that unelected people with the State are deciding about water allocations.

Discussion is held regarding how this can affect our area.

DISCUSSION/ACTION ITEMS

Presentation/Discussion from Colusa Groundwater Authority Long-term Funding Committee Representatives regarding Landowner Participation on the Committee

Commissioner Moresco stated that the CGA (Colusa Groundwater Authority) is starting a Proposition 218 process to fund the GSA (Groundwater Sustainability Agency). A request for proposal went out to find a firm for that process. Provost and Pritchard was the only firm to submit a proposal.

Ms. Fahey provided a brief description of the CGA Board make up and how the current day to day operations are currently funded. She added, in July of 2019 that the agency funding will run out. The Proposition 218 process is to assess the landowners as little as possible for the day to day functions of the CGA. If the CGA can't remain up and running the State will come in and take on groundwater management at a very high price to landowners. If the Proposition 218 vote fails it would be the same consequence.

Question: Mr. Michael Doherty asked who will be voting in the 218 process.

Answer: Ms. Fahey responded, the landowners that are subject to SGMA. The Cities may add an assessment to their water fees so parcels within city limits would not be part of the 218 vote.

Question: Mr. Oscar Serrano asked if it was a weighted vote.

Answer: Ms. Fahey replied that it was and added that landowner participation is crucial.

Question: Commissioner Charter inquired about the irrigated land outside of district boundaries.

Answer: Ms. Fahey replied that it would apply to all land within the Colusa County portion of the Colusa Basin.

Ms. Fahey stated if the Proposition 218 assessment passes we anticipate the first assessment will come in December of 2019. That will leave about a six month funding gap between the end of the fiscal 2018/19 year and when assessment funds would be available to the CGA for operations, however that has been accounted for in the budget.

Question: Commissioner Dormer asked if there was any talk of how much the assessment would be.

Answer: Ms. Fahey replied that we won't know until the engineer's report comes in, but probably close to \$1.00 per acre.

Question: Commissioner Dormer asked if there was any match of funding by the State.

Answer: Ms. Fahey replied that there was not. There are grant opportunities. We have already received a one million dollar grant from DWR for development of the Groundwater Sustainability Plan (GSP).

Ms. Fahey stated that this assessment would be for day to day operations of the CGA. For special projects it would be likely that another assessment would be necessary at the localized area of the project.



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Unfortunately there is a lot we don't know at this time. We will be learning a lot over the next couple years as the GSP is developed.

Question: Ms. Rominger asked if there would be any tax credits.

Answer: Ms. Fahey replied that she did not know. She will inquire about this.

Question: Mr. Doherty asked if there will be a change in votes on the CGA Board when the assessment goes into effect.

Answer: Ms. Fahey replied there would not be, that is why it is so important landowners get involved in the process and provide input.

Ms. Fahey stated that she has reached out to landowners and some are here today. She then asked if any landowners in attendance were interested in joining the CGA Long-Term Funding Committee.

Commissioner Moresco added that the Long-Term Funding Committee will be providing input on the budget as well as getting the 218 process going.

Michael Doherty, Perry Charter, and Winston Peterson volunteered to serve on the CGA Long-Term Funding Committee. Oscar Serrano from the Colusa Indian Community stated that he would have to check with the Tribal Council and if they agree, he is willing to participate on the committee.

Review and Adoption of Annual Statement of Goals and Objectives

Commissioner Dormer stated that Goal number 5 should be number 4.

Mr. Serrano stated that Goal number 3b should be 3a.

Motion: Commissioner Charter moved to Adopt the Annual Statement of Goals and Objectives with the numbering changes. Commissioner Dormer Seconded. The motion passed 4-0 (1 absent).

Discussion and Potential Action to support Water Storage/Shasta Dam Raise Project

Ms. Fahey stated that Commissioner Williams had requested at the last meeting that the Commission provide a Resolution in support of new surface water storage in California, including raising the Shasta Dam. This Commission would offer a resolution of recommendation to the Board of Supervisors and the Board of Supervisors would then need to approve the Resolution.

Motion: Commissioner Charter moved to direct staff to coordinate with Mr. Williams to prepare a Resolution Recommending Support of the Water Storage/Shasta Dam Raise Project. Commissioner LaGrande Seconded. The motion passed 4-0 (1 absent).

UPDATES AND REMINDERS

Staff Report

Ms. Fahey provided a brief Staff Report which included:

- SGMA Update
- Basin Boundary Modifications
- Basin Reprioritization



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The Colusa Subbasin has been reprioritized from a medium priority to a high priority basin in the draft 2018 Basin Prioritization recently released by the California Department of Water Resources (DWR). Ms. Fahey explained that there currently is no difference in SGMA requirements for medium and high priority basins, but the concern is that in the future, high priority basins could be held to a higher standard with stricter regulations. The Colusa Basin moved to a high priority mostly based on a criteria that any basin that had participated in groundwater transfers in the last ten years was automatically given enough points to place that basin in the high priority category. Discussion was held regarding past groundwater substitution transfers.

Question: Mr. Doherty asked if there is a chance our basin will be looked at again and rerated to go back to a medium priority basin.

Answer: Ms. Fahey replied that she was unsure. The CGA will provide comments to DWR disputing the prioritization.

Ms. Rominger stated that these transfers were approved by the State at the time and now they are holding it against us. If they were to do that for future transfers that would make sense but to retroactively penalize us is wrong.

A general consensus is agreement with Ms. Rominger's statement.

Ms. Fahey stated that the CGA will be providing a comment letter. Citizens can provide them as well.

Other topics discussed from the Staff Report included:

- Technical Support Services/Subsidence
- Groundwater Sustainability Plans (GSP)
- Proposition 1 Stressed Basins Grant
- NexGen Utility Management; Proposed Recharge Project on west side

Ms. Fahey briefly provided an overview of a recharge project that involves installing drain tiles below the root zone in almond orchards and providing a slow, continuous supply of water for recharge. Commissioner Charter fills the Commission in on what he knows about the potential recharge project.

Mr. Doherty states that maybe they should be invited to the next meeting.

Ms. Fahey stated that she has asked them to come to the September CGA Board meeting.

Commissioner Charter stated that he would like to talk to others that have implemented this.

Discussion was held regarding the probability of this type of project working in this area.

Reminder; Commissioner Terms of Office

Ms. Fahey stated that this is just a reminder that two of the Commissioners terms are up at the end of the year and they would need to reapply to be reappointed by the Board of Supervisors.



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Commissioner Comments and Updates

None.

Items for Next Agenda

- Review/approve year-end Groundwater Commission Update to be presented to the Board of Supervisors
- Draft Resolution Recommending Support of the Water Storage/Shasta Dam Raise Project (possible earlier Special Meeting)
- Subsidence Study
- NexGen Utility Management Recharge Project

ADJOURNMENT

Next Regular meeting date: November 28, 2018

The meeting was adjourned at 11:15 a.m.

AGENDA ITEM 2.a

Draft Presentation to Board of Supervisors re: 2018/19 Groundwater Commission Update

FEBRARY OR MARCH, 2019 (?) BOS MEETING

The Colusa county Groundwater Commission Bylaws state that the Commission shall report to the Board of Supervisors annually, not later than March 1, and shall include progress made on the items in the Annual Goals and Objectives.

After discussion/edits, the following text can be converted to a Powerpoint presentation

The Colusa County Groundwater Commission was initially responsible for implementation of the Colusa County Groundwater Management Plan (GMP). The passage of the 2014 Sustainable Groundwater Management Act (SGMA) greatly shifted the focus and processes of local groundwater management activities throughout California. The Colusa County GMP will be replaced with Groundwater Sustainability Plans for the Colusa and West Butte subbasins, and local Groundwater Sustainability Agencies are responsible for development and implementation of these plans.

In 2017, due to the changes brought on by SGMA, the Colusa County Groundwater Commission Bylaws were updated and a new slate of Commissioners was appointed by the Board of Supervisors.

The Colusa County Groundwater Commission consists of the following members:

- District 1: Darrin Williams (Chair)
- District 2: Deke Dormer
- District 3: Matt LaGrande
- District 4: Tom charter
- District 5: Jeff Moresco (Vice Chair)

Mr. Williams and Mr. Moresco each serve as a Private Pumper representative on the Board of the Colusa Groundwater Authority (CGA). The CGA is the Groundwater Sustainability Agency responsible for implementing SGMA in the Colusa County portions of the Colusa Subbasin and portions of the West Butte Subbasin.

It is clear that the Groundwater Commission will work in close coordination with the Colusa Groundwater Authority in the era of SGMA.

Since its restructure in 2017, the Colusa County Groundwater Commission has met on the following dates:

- June 6, 2017
- October 3, 2017
- April 4, 2018

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- July 11, 2018
- November 28, 2018

Some milestones achieved in 2018:

- New Commissioners appointed, Oath of Office received
- Election of officers
- Two Commissioners appointed to serve on the Colusa Groundwater Authority Board
- Groundwater conditions updates presented by the California Department of Water Resources (DWR)
- Annual Statement of Goals and Objectives completed for 2018/19

PROGRESS ON
Annual Statement of Goals and Objectives
For the period of March 1, 2018 – February 28, 2019
Adopted by the Colusa County Groundwater Commission on July 11, 2018

Goal 1: Comply with SGMA Regulations and Deadlines

- a. The Groundwater Commission will coordinate with the Colusa Groundwater Authority (CGA) and support their activities to maintain sustainable groundwater conditions in Colusa County.

Two Commissioners serve on the CGA Board; updates on CGA activities and SGMA in general are provided at each Commission meeting. The Commission has been considering different ways that they can support the CGA, including:

- Acting as a subcommittee to the CGA to collaborate with other agencies on groundwater/SGMA related projects. The two agencies could work hand in hand this way. The Commission could vet certain project proposals before they go before the CGA Board.
 - The Commission could act as the oversight of areas that are not covered by the CGA, and communicate that information to the CGA
 - Be engaged with issues related to surface water allocations, which will affect groundwater and SGMA implementation
 - Be aware and proactive regarding potential issues with domestic wells, and provide education/communication between ag pumpers and domestic well users
 - The Commission has requested more legislative updates related to water issues at their meetings
- b. The Groundwater Commission will coordinate with, provide input to, and support the Colusa Groundwater Authority and other GSAs during development of Groundwater Sustainability Plans for the Colusa and West Butte Subbasins.

Groundwater Sustainability Plan development is just getting underway locally. There will be many opportunities for the Commission to be involved.

Goal 2: Public Outreach Program

- a. The Groundwater Commission will support and participate in outreach activities to inform the public and solicit public input about groundwater conditions, and SGMA implementation activities. The Commission will coordinate with and support the Colusa Groundwater Authority's Public Outreach and Engagement Plan, and utilize

all outreach options as feasible, including email, social media, mail, newspaper articles, community meetings, partnering with other local water-related organizations, and face-to-face interactions with landowners.

The CGA's Public Outreach and Engagement Plan is in development and not yet completed. There have been many discussions at Groundwater Commission meetings regarding public outreach. Some ideas that have come from the Groundwater Commission are;

- The Groundwater Commission can provide a forum at their meetings for landowners to interact with CGA Board Members
- The Commission can help facilitate multiple small-scale meetings in each community so the public doesn't have to travel far and the meetings are more specific to each community
- Partner with other agencies such as Family Water Alliance, Sites Project Authority to provide outreach to a larger audience
- Utilize social media
- Utilize a newsletter

Goal 3: Review and Assess potential Projects in Coordination with the Colusa Groundwater Authority

- a. The Groundwater Commission will assist the CGA by reviewing and making recommendations on proposed projects that could benefit the groundwater basins, including groundwater recharge projects and others.

There have not been any opportunities to review potential projects. This will become more important during GSP development.

Goal 4: Remain informed of Legislative Activities

- a. Groundwater Commissioners will remain up to date on Statewide Groundwater legislative activities and report relevant information at Groundwater Commission meetings.

The Commissioners have reported on various legislation during the regular "Comments and Updates" portion of their agenda, and Staff will add a regular agenda item for legislative updates.

- b. A presentation on current legislative activities will be given to the Groundwater Commission each year by an expert speaker at one regular meeting.

This is still to be arranged for 2018/19

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Public Outreach Opportunities

December 5, 2018 Colusa GW Authority and Glenn GW Authority Staff report to TCCA Board

Topic: General SGMA Updates

December 6, 2018 Staff report at Colusa County Department of Agriculture Growers Meeting

Topic: Groundwater Update, focus on CGA Proposition 218

Late January, 2019 Public Meeting , hosted by CGA, with facilitator assistance

Topics: SGMA 101, GSP Development and Proposition 218

February, 2019 Colusa Farm Show, hosted by CGA and Groundwater Commission?

Topics: SGMA, Proposition 218

March, 2019 Public Hearing, Proposition 218

Groundwater Commission participation:

- Potential to use next Groundwater Commission meeting as a public outreach forum – January or February
- Co-host a Farm Show workshop with CGA
- Community meetings, possibly co-host with other agencies

Staff Report

November 28, 2018 Colusa County Groundwater Commission Meeting

1. SGMA Update

a. Technical Support Services (TSS)

The CGA has been awarded Technical Support Services from DWR to install a multi-completion groundwater monitoring well at 2nd and Cypress Streets in downtown Arbuckle. The property is owned by the County of Colusa and is an excellent location for a dedicated monitoring well that will measure groundwater levels in multiple aquifer zones, and will come equipped with a real-time, continuous monitoring device.

There may be an opportunity in 2019 to apply for Technical Support Services for GPS subsidence monitoring units in the Arbuckle area.

DWR accepts TSS applications from a single point of contact in each basin or subbasin. Staff from the CGA is the point of contact for the Colusa Subbasin. DWR is accepting applications on an ongoing basis. The Glenn Groundwater Authority is investigating potential sites for a new monitoring well(s) in the Glenn County portion of the Colusa Subbasin.

b. Groundwater Sustainability Plans (GSP)

The Colusa Groundwater Authority and Glenn Groundwater Authority are working together to develop a Groundwater Sustainability Plan for the Colusa Subbasin. Work is getting underway in the Colusa and West Butte Subbasins on the Basin Settings portions of the Groundwater Sustainability Plans. As this work moves forward, there will be a great need for public outreach and engagement and we will look for opportunities for the Groundwater Commission to participate.

c. Proposition 218

The Colusa Groundwater Authority has contracted with Provost and Pritchard Engineering to complete a Proposition 218 Majority Protest Assessment process. The proposed assessment will cover the day to day operations of the Colusa Groundwater Authority – things like staffing, legal counsel, insurance, etc. This effort will also require a great deal of public outreach and engagement and we will look for opportunities for the Groundwater Commission to participate.

2. Subsidence

DWR has not yet released the results of the 2017 Sacramento Valley-wide subsidence survey. The last update is that the report was completed by the Northern Region Office and has been sent to the Sacramento office for review.

Staff Report

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3. Groundwater Recharge

a. Colusa Basin Drainage District Projects Subcommittee

The Colusa Basin Drainage District Board has formed a “Projects Subcommittee.” The purpose of the Subcommittee is to identify and investigate potential groundwater recharge projects on lands in the District’s jurisdiction which includes portions of Glenn, Colusa and Yolo Counties. The Subcommittee will also look at leveraging funding for projects from grants and through partnering with other agencies. The Subcommittee has identified a few potential projects, but agreed to focus on a single project now, while keeping the others on the radar. The subcommittee is investigating a potential project on Salt Creek in Arbuckle and they will be meeting with the landowner on December 6. Ms. Fahey is a member of the Subcommittee.

b. NexGen Utility Management; Proposed Recharge Project on west side

Mr. Cocke from NexGen Utility Management provided a presentation to the CGA Board at their September meeting regarding his idea of utilizing subsurface drainage in orchards for recharge on the west side of Colusa County. Commissioner Charter has been involved in development of this type of project and hopefully can provide an update.

My turn: A chance to finally solve the Delta quandary

Jeffrey Mount and Ellen Hanak, *Special to CALmatters*

https://calmatters.org/articles/commentary/my-turn-a-chance-to-finally-solve-the-delta-quandary/?utm_source=CALmatters+Newsletter&utm_campaign=fa9d97f07a-WHATMATTERS_NEWSLETTER&utm_medium=email&utm_term=0_faa7be558d-fa9d97f07a-150236181

It is imperative to improve the health of the greater Delta watershed, a major source of water for cities and farms across the state. And various stakeholders have a chance to achieve that goal in the coming weeks while protecting important economic interests.

Amid all the election news, Gov. Jerry Brown and Gov.-elect Gavin Newsom asked the State Water Board to delay its vote on setting new water quality standards for the San Joaquin River to give time to develop voluntary agreements regarding the amount of water to be allocated to protect fish.

The delay offers the governor, the governor-elect and various interests a chance to forge a more comprehensive and effective approach to tackling one of California's biggest environmental water challenges.

The water board's proposal for the San Joaquin River system is the [first step in its overhaul](#) of water standards for the greater Delta watershed. Soon, the board will focus on the Sacramento River and its tributaries, and the Delta itself.

The pressure of impending regulation appears to have brought parties to the negotiating table in earnest. That's a good thing. The opportunity should not be wasted.

Voluntary agreements to tackle tough water problems have many potential benefits. They tend to get more buy-in than government-imposed regulations, and they can avert protracted and costly litigation.

They also can result in more creative approaches.

One example is the [Lower Yuba River Accord](#), in which parties avoided regulation by developing a better way to protect flows for endangered salmon at less cost to farmers.

The agreement involved integrated management of the water stored in reservoirs and in the local groundwater basin. As a result, the Yuba was less affected than other watersheds by the 2012-2016 drought.

That accord showed that while the State Water Board can mandate water quality and flow standards, voluntary agreements can take a more comprehensive approach.

A successful settlement in the greater Delta watershed should meet five important criteria:

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- Good governance, guided by robust plans for how water and other assets will be managed to improve ecosystem health.
- A [water budget](#) for ecosystems that can be flexibly managed. Parties should avoid getting hung up on the specific amount of water initially set aside for ecosystems. What matters more is putting in place a system for adjusting this allocation over time as scientific understanding about what works improves.
- Habitat investments that are linked to changes in water management, to maximize the efficiency of water used for the environment.
- A transparent, collaborative science program that tracks and guides ecosystem investments and water use.
- Funding for the entire package. A reliable, ongoing source of funding is essential to support the science and governance of this effort.

A fee on water diversions across the watershed may be the best option. Proposition 68, approved by voters in June, sets aside \$200 million to begin needed habitat and flow investments. That will be insufficient by itself.

The governor-elect should commit to obtaining additional habitat funds that will be needed down the road.

Meaningful voluntary agreements generally don't come together unless parties have a compelling reason to make a deal. A regulatory threat can be that reason. But there also must be ongoing commitments by all parties.

To ensure that commitments on voluntary agreements are honored, the board might take a page from the playbook of California's landmark Sustainable Groundwater Management Act of 2014.

This law relies on local government to develop and implement groundwater sustainability plans. The State Water Board can step in if local efforts fall short.

For the Delta watershed, the board might adopt its current plan as a backstop to settlements. And if the settlements are not honored, the board's original order would go into effect.

Deal-making on water is hard. All parties have to give something up to get what matters most. But voluntary accords offer the best hope for turning things around in the Delta's troubled freshwater ecosystems—while continuing to allow these waters to support a healthy California economy.

Jeffrey Mount, mount@ppic.org, is senior fellow and Ellen Hanak, hanak@ppic.org, is the director at the Public Policy Institute of California's Water Policy Center. They wrote this commentary for CALmatters.

The Public Trust and SGMA

Posted on October 7, 2018 by UC Davis Center for Watershed Sciences

by Brian Gray

<https://californiawaterblog.com/2018/10/07/the-public-trust-and-sgma/>

A recent court ruling about the Scott River has prompted questions about SGMA and the public trust doctrine.

In a [recent decision](#) in litigation over flows and salmon survival in the Scott River system, the California Court of Appeal has ruled that groundwater pumping that diminishes the volume or flow of water in a navigable surface stream may violate the public trust. The public trust does not protect groundwater itself. “Rather, the public trust doctrine applies if extraction of groundwater adversely impacts a navigable waterway to which the public trust doctrine does apply.” The court also concluded that the Sustainable Groundwater Management Act (SGMA) does not preempt or preclude independent application of the public trust to groundwater pumping, finding “no legislative intent to eviscerate the public trust in navigable waterways in the text or scope of SGMA.”

These interpretations follow from both hydrology and law. If groundwater extraction diminishes stream flows and jeopardizes public trust uses—which include water quality, fish and wildlife, recreation, and other instream uses—it should be treated the same as surface diversions that have similar effects. This is also consistent with the California Supreme Court’s landmark decision in the Mono Lake case. In [National Audubon Society v. Superior Court \(1983\)](#), the court recognized the public trust as a limitation on Los Angeles’ diversions of water from nonnavigable tributaries, because those diversions harmed public trust uses in the navigable lake downstream.

Moreover, if the public trust was not displaced by the modern statutory water rights system generally, as the Supreme Court held in *Audubon*, it should not be displaced by a more specific law such as SGMA—unless the legislature manifested its intent to preempt the public trust or other aspects of California water rights law. Indeed, SGMA says just the opposite, declaring that nothing in the statute or any groundwater sustainability plan “determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.”

The Scott River Decision and SGMA Implementation

Although the court of appeal’s opinion makes clear that the public trust applies independently of SGMA, the Scott River decision nevertheless will influence the formulation and implementation of groundwater sustainability plans (GSPs). At a minimum, the decision should focus groundwater sustainability agencies and groundwater users on SGMA’s directives to avoid “depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of . . . surface water” and to address the effects of pumping on groundwater dependent ecosystems in their sustainability plans. ([Water Code §§ 10721\(x\)\(6\) & 10727.4\(l\)](#)) The overriding concern of most GSAs will be to manage demand and available recharge to achieve sustainable aggregate pumping levels by their members as required by SGMA. This presents a risk that they will downplay other aspects of sustainability, including prevention of injury to public trust uses. The Scott River decision changes this dynamic.

The decision also affects the timeframe for remediating harm to public trust uses of hydrologically connected, navigable rivers or lakes. SGMA requires GSAs to develop and implement plans that

achieve sustainability within a 20-year (or longer) period. Under the new decision, however, a claim to enjoin groundwater pumping that impairs the public trust may be brought at any time. In adjudicating these claims, the State Water Board and the courts are likely to consider—and give some deference to—the GSP’s strategy and timeline for addressing harm to surface resources. But neither would be bound or limited by the terms of the sustainability plan.

Public trust claims are subject to different standards than those that apply under SGMA however, and these differences cut in both directions. For example:

- The public trust only protects *navigable* rivers and lakes. Therefore, the Scott River decision will not affect groundwater pumping that harms wetlands or nonnavigable streams—unless the harm manifests itself downstream in a navigable body of water. In contrast, SGMA’s directives extend to all types of groundwater extraction and surface water resources.
- In *Audubon*, the state Supreme Court held that the public trust doctrine requires water users to protect public trust uses to the extent *feasible*. This requires an assessment of the feasibility of restoring and protecting the surface resource, as well as consideration of the water users’ alternative sources of supply, demand reduction capabilities, efficiency improvements, and cost considerations. In contrast, SGMA’s sustainability mandate does not include a feasibility criterion.
- The public trust requires restoration and maintenance of groundwater levels and surface water flows as needed to afford reasonable protection of public trust uses. By comparison, SGMA provides that GSAs are not required to address “undesirable results” that occurred before January 1, 2015, such as harm to beneficial surface water uses. No such baseline or statute of limitations applies to public trust claims.

The Scott River Decision and Water Management

With these principles in mind, the Scott River decision will likely play out in mixed ways across California.

First, there are many watersheds where groundwater discharges feed headwaters and tributaries or the groundwater table supports the rivers themselves. This occurs throughout the Sacramento-San Joaquin River system, in many coastal streams, and in the rivers of the Tulare Basin above the rim dams where more than two-thirds of stream discharges come from groundwater. When river flows run low and threaten public trust uses, the Scott River decision will extend remediation and protection responsibilities to surface diverters and groundwater extractors alike.

Second, hydrologic studies have demonstrated that, in some systems, groundwater pumping is a significant cause of stream flow reduction that harms fish. These include: the Cosumnes River, where late season diversions and groundwater pumping imperil fall-run Chinook salmon; the Russian River, where pumping from aquifers that support the river and its tributaries has placed coho salmon in jeopardy; and the Scott River itself, where groundwater overdraft has reduced late summer and fall stream flows and raised surface water temperatures to the detriment of Chinook salmon, coho, and steelhead. The public trust is likely to play a significant role in these systems.

Third, there are regions where the hydrologic connection between groundwater and navigable rivers and lakes was lost long ago. On the valley floor of the Tulare Basin, for example, sustained groundwater overdraft for many decades has lowered the groundwater table by hundreds of feet.

Because restoration of the hydrologic connection would require drastic long-term reductions in groundwater extraction and water use, it is unlikely that the State Water Board or the courts would find that such restoration is feasible under the standards set forth in *Audubon*.

Finally, there are systems where local water users and other interested parties are working to restore and protect stream flows, wetlands, riparian vegetation, and other groundwater dependent ecosystems. Although many of the groundwater dependent ecosystems in these systems do not qualify as navigable waters, they often feed into and support navigable rivers. To the extent that pumping adversely affects public trust uses in such surface waters, groundwater extractors may be called on to contribute to system-wide solutions. Examples include: the Oxnard Groundwater Subbasin, where the Fox Canyon Groundwater Management Agency is working with The Nature Conservancy to improve water supplies for six groundwater dependent ecosystems that are tributary to the Santa Clara River; and the Los Angeles River system, where the City of Los Angeles is working with Friends of the LA River to revitalize the river by removing concrete, restoring riparian zones, controlling stormwater inflows, and creating infiltration areas to improve groundwater conditions that support the river.

Conclusion

The Scott River decision places new responsibilities on GSAs and groundwater users, and it increases the legal leverage of those who seek to restore and protect groundwater dependent rivers and ecosystems. Yet, the decision need not lead to more litigation.

Rather, GSAs with responsibility over groundwater that has (or feasibly could have) a hydrologic connection with surface water resources should incorporate public trust analysis into their sustainability plans. They should work with experts in groundwater-surface water hydrology and ecological sciences, and they should partner with public trust advocates. The Fox Canyon and LA River collaborative restoration programs are useful examples.

Incorporation of public trust analysis into relevant GSPs offers several advantages over public trust litigation. Sustainability plans are more comprehensive, because they must include evaluation of the effects of groundwater pumping on *all* beneficial uses of surface water and groundwater dependent ecosystems, not just on public trust uses of navigable waters. The plans also can provide a vehicle for integrated management that includes floodplains, wetlands, riparian zones, and connected surface waters, as well as regulation of groundwater pumping and deployment of surface water recharge. And GSP formulation can be a collaborative process that engages all interested parties, rather than pitting them against one another. Indeed, every successful public trust lawsuit to date has culminated in a negotiated settlement that folds the public trust remedies into a broader, multifaceted restoration and long-term management program.

The State Water Board or the Department of Water Resources should facilitate these studies by providing guidance on protecting and remediating harm to public trust uses within the framework of groundwater sustainability plans. The Department of Fish and Wildlife and DWR should offer technical support. DWR also should make clear that its formal GSP review will include evaluation of the plan's analysis of the effects of groundwater extraction on waters protected by the public trust and its strategy for addressing harm to public trust uses.

Colusa County Groundwater Commission

November 28, 2018

Agenda Item 3.b

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Further Reading

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