

Sacramento Central Groundwater Authority (SCGA)
Budget Subcommittee Meeting
Wednesday, September 21, 2016

1. CALL TO ORDER AND ROLL CALL

Chair, Brett Ewart called the Sacramento Central Groundwater Authority Budget Subcommittee meeting of Wednesday, September 21, 2016 to order at 1:11 p.m.

The following meeting participants were in attendance:

Subcommittee Members

Tom Mahon – Agricultural Interests

Carl Werder – Agricultural Residential

Todd Eising – City of Folsom

Brett Ewart – City of Sacramento

Forrest Williams – County of Sacramento

Bruce Kamilos – Elk Grove Water District/Florin Resource Conservation District

Paul Schubert – Golden State Water Company

Staff Members:

Darrell Eck – Executive Director

Sarah Britton – Legal Counsel

Stephanie Studdert – Clerk

Ramon Roybal

Others in Attendance:

Jonathan Goetz – GEI

Rodney Fricke – GEI

Mark Madison – Florin Resource Conservation District/Elk Grove Water District

Kerry Schmitz – SCWA

Attorney Michael G. Colantuono – Colantuono, Highsmith and Whatley

2. PUBLIC COMMENT

None

3. PROPOSITION 218 AND FUNDING SGMA GROUNDWATER SUSTAINABILITY PROGRAMS

Attorney Michael G. Colantuono with the firm Colantuono, Highsmith and Whatley provided a presentation. (*Note: The presentation given by Michael G. Colantuono may be viewed on the Authority's website for the September 21, 2016 subcommittee meeting date.*) The Presentation covered the following topics:

- 1- Proposition 218
- 2- Proposition 26
- 3- Pending lawsuits regarding rate making
- 4-Funding visions of SGMA
- 5-Constitutional limitations on rate making

Member Forrest Williams asked a question regarding Proposition 218, specifically, in the context of SCGA and who constitutes majority vote. Attorney Michael Colantuono provided that when dealing with SCGA and groundwater usage it will probably be one vote per well. He further stated that there is not a lot of law that answers these questions at this. Member Forrest Williams asked if SCGA would use the model of total accounts per member because the JPA doesn't directly have any accounts. Attorney Michael Colantuono responded by stating that it would depend on what SCGA was trying to regulate. Member Paul Schubert stated that SCGA has sixteen members and each member pays a fee. Members who pump more pay a higher fee. He asked if SCGA would be collecting fees from member agencies and the member agencies are passing those fees onto the customers. Member Schubert further asked if they would be getting down to the granular such as, one member has twenty wells and pays for each of those wells? Legal Counsel Sarah Britton clarified that SCGA accepts annual contributions not fees as there is a legal distinction between the two.

Regarding cost of service, Director Paul Schubert asked if the cost of service includes a reserve policy. Attorney Michael Colantuono stated that it does but that it must be reasonable.

Legal Counsel Sarah Britton requested Attorney Michael Colantuono say a few words regarding the importance of keeping your rate making consultant through litigation. He provided an example of a case that did not retain their rate making consultant. Attorney Michael Colantuono stated that he recommends that SCGA retain its rate making consultant throughout the entire process.

Chair Brett Ewart stated that Sacramento has been tacking the resale water program. They have considered spreading it throughout the rate payers. He further stated they also have a

rate subsidy program for low income housing. The decision that Sacramento came up with was that it must be funded by general fund and that it could not be funded by 218. Member Todd Eising asked if a low income rate is defensible. Attorney Michael Colantuono stated that if you are funding from general fund then you should be defensible.

Chair Brett Ewart stated that the SCGA board is concerned about the deadline and if they do not develop an appropriate groundwater sustainability structure then the State will come in and do it for them.

Following the presentation, the board and members of the audience discussed how to proceed. Member Todd Eising requested clarification as to how this relates to SCGA. Attorney Michael Colantuono explained that this means that everyone will have to use less groundwater, water will be more expensive, and entities will have to spend a lot of money on both planning and resource management. He further stated that entities will have to take water that is going to waste and put it to use. Legal Counsel Sarah Britton stated that the committee is tasked with reconsidering the annual contribution model.

Member Bruce Kamilos stated that some of the member agencies represent people that do not pump directly out of the ground. Member Bruce Kamilos asked if it would be legal to impose a land based tax fee even if residents are not pumping directly out of the groundwater basin. He provided that Elk Grove Water District has a strong conjunctive use program in place, where they can trade groundwater for surface water. Attorney Michael Colantuono stated members would need to explain to residents with surface water rights why you are establishing a fee. He further stated that members would need a good cost of service analysis.

Legal Counsel Sarah Britton stated that this gets back to an initial question of 'who are our customers?' She stated that as of now, SCGA has constituents not customers. If SCGA decides to move away from the annual contribution model to something else, the Board would need to ask itself, what do we fund, who pays for services and in what manner. Attorney Michael Colantuono stated that there is an important political choice to be made as to who has to go raise the funds. Do you want to raise it and spend it collectively, with an agency whose name means nothing to most of your constituents or do you want to raise the money and spend it through agencies they know. Attorney Michael Colantuono recommended starting with a pollster and communicating with the community.

Member Tom Mahon asked if it would matter if someone had pre-1914 water rights. Attorney Michael Colantuono stated that it could if you chose to make it so. He further stated that when preparing your rate schedule you may divide your customers into classes that make since in terms of how much it costs to serve them and how much benefit they get when you do.

Member Paul Schubert asked for clarification stating there are two structural models for SCGA funding. First is the current model which is annual contributions from the agencies. Member Schubert stated that he assumes the current model would not be subject to Proposition 218 and 26. Attorney Michael Colantuono stated it would not, as the current model is a voluntary contractual relationship. Member Schubert continued and stated the second would be where SCGA takes the lead on funding itself through direct a well by well basis by property tax. Member Schubert stated that he assumes the next discussion would be with a rate consultant to look at both options. Member Todd Eising stated it seems that this discussion is leading to an RFP and a rate consultant. He inquired if there is work that needs to be done prior to obtaining a rate consultant such as if the rate would be based on parcel, well production, or conjunctive use combo. Member Eising stated there are a lot of things a consultant would look to SCGA for direction. Executive Director Darrell Eck stated SCGA needs to have the conversation of what is the general direction it should go based on what we know.

Attorney Michael Colantuono provided some starting points. He stated that first; the committee needs to have a sense of whether it will be raising the funds collectively or disparately. If it is raising the funds disparately, you would really be asking a consultant to cut your pie at the collective level and then send the members off to do their own rating. Second, when you retain a rate making consultant you should not expect it to be one deliverable and they would leave and write a rate structure. He stated that the committee should expect a dialog and the work to be performed in phases.

Member Todd Eising asked if it is necessary to have a full rate study instead of continuing with contributions or is it better to perform the study later when values are more known. Legal Counsel Sarah Britton stated that she believes that is what is being suggested. The first talk would be if you want to continue to raise the contribution disparately and stick with the annual contract model for the near future or do you want to start embarking in discussion with a rate consultant and morph into a more customer based, fee based entity.

Chair Ewart stated that he wonders if there is fatal flaws that SCGA won't be able to make it past down the road. All members have their own issues such as tackling the question of the zone 13 taxes all the time, big jumps in fees, or little groundwater pumping but there are just a lot of people using surface water. Legal Counsel Sarah Britton stated these questions are why the committee needs to agendize this for a future meeting because there are local elements that each member faces that will go into the discussion of which direction SCGA will take.

Attorney Michael Colantuono asked if SCGA contributors cover 100% of the use of the basin or are their free riders. Legal Counsel Sarah Britton stated that there are contributions

made on behalf of a number of different interest groups and those contributions come from different sources. One of which is heavily relied upon is the Zone 13 fund that the Sacramento County Water Agency manages. Attorney Michael Colantuono stated that if SCGA remains with the disparate model and there are free riders out there, the model that is used for each contributing agency needs to be consistent with the model SCGA uses to pursue the free riders.

Member Bruce Kamilos stated that one of his concerns is for Elk Grove Water District and if they could prevail on a legal challenge with model they currently have for the contributions. He asked if Elk Grove Water District was double billing their rate payers as they pay into the Zone 13 fund and are charged for this new contribution. Legal Counsel Sarah Britton stated that if SCGA stays with the disparate model those questions would need to be answered by your own agencies counsel.

Attorney Michael Colantuono stated that the challenge with disparate model is that you are going to have multiple rate makers and if one gets challenged legally, then all of the rate makers will inevitably be challenged. Member Forrest Williams stated that some agencies don't have rate payers and agrees that this is something that we will need to agendize and talk through.

Attorney Michael Colantuono provided that you may want to distinguish your SGMA program from everything you do. Fund the SGMA program in a way that is consistent with SGMA law and get that mandate funded then treat the rest of your operation differently. This can make sense if there is a significant gap between the two.

Chair Brett Ewart stated that he does not see SCGA making huge changes within time for the next budget. Chair Ewart asked if there are additional models. The committee has heard two options but there may be more. He further stated that weighing the pros and cons of each and how they would reflect the areas of conflict would be beneficial. Each member agency may be helped or hindered by one funding model or another. Chair Ewart requested staff look into options while keeping in mind the time constraints for the Alternative Submittal.

Executive Director Darrell Eck stated that the Board needs to start the dialog regarding contributions sooner than later as there are questions. He further stated that the Board cannot wait until February or March of next year before they start talking about it again. Member Todd Eising requested a brainstorming session where the outstanding issues are bulleted.

Mark Madison addressed the subcommittee, stating that he advises that the Board bring on a rate consultant sooner to help the group to deal with the questions. Whether it leads to a

new rate structure or not, he thinks SCGA needs some additional independent guidance. He further stated that there are two basic choices that the subcommittee has in front of them currently. Stay with the current disparate model where SCGA is charging individual agencies or you can change that model and have SCGA directly charge either parcel owners or those who are extracting groundwater. He finished by stating that he thinks the current model is vulnerable.

Member Forrest Williams stated that given the political issues we should deal with the pros and cons before hiring a consultant because he sees some major issues that would need to be talked through. Member Bruce Kamilos stated that he believes SCGA should send out a generalized RFP and his recommendation would be to get the RFP out there to get the professional help. Member Forrest Williams finished with stating it doesn't hurt to have a planning session. Member Paul Schubert stated that a workshop where all of agencies lists their issues and then how do those issues fit under different models would be ideal.

Chair Brett Ewart addressed Kerry Schmitz of the Sacramento County Water Agency asking what the County's perspective was on this. Kerry Schmitz stated that Zone 13 is a relatively small amount in the grand scheme of things. The assessment is roughly \$2.5 million annually. It's intended to pay for drainage and water supply planning activities. She stated almost half of the money goes towards Water Forum activities. Kerry Schmitz stated that her point to the entire group is that Zone 13 is not a funding mechanism for funding all groundwater management activities in the County. She said that it's an appropriate pot to help things get started but she doesn't think SCGA should count on Zone 13 funding to continue to fund groundwater management activities. She stated that she will continue to budget for assistance but there will come a time when the organization will need to be self-sufficient.

Chair Brett Ewart stated that what he heard from the group was that the next meeting will be a brainstorming session about the issues surrounding the different funding models, lists of concerns, and discussion time. Executive Director Darrell Eck provided November 9, 2016, as the date for the workshop immediately following the normal board meeting.

4. BUDGET SUBCOMMITTEE MEMBER COMMENTS

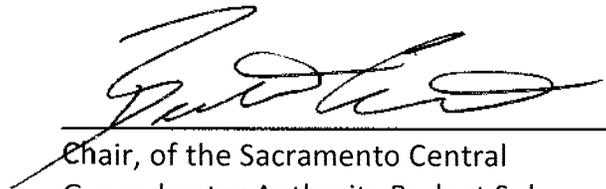
None

ADJOURNMENT

Chair Brett Ewart adjourned the meeting at 3:22 p.m.

UPCOMING MEETINGS

Next SCGA Board of Directors Meeting - Wednesday, October 12, 2016, 9:00 a.m. located at 10060 Goethe Road, South Conference Room NO. 1205 (Valley Oak)


Chair, of the Sacramento Central
Groundwater Authority Budget Subcommittee

ATTEST: 
Clerk, of the Sacramento Central
Groundwater Authority Budget Subcommittee

