



EASTERN SAN JOAQUIN GROUNDWATER AUTHORITY

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September 26, 2023

Honorable Michael D. Coughlan, Presiding Judge
San Joaquin Superior Court
180 E. Weber Avenue,
Ste. 1306J
Stockton, CA 95202

Dear Judge Coughlan:

Responses to 2022-2023 Grand Jury Reports

Pursuant to Section 933.05 of the California Penal Code, attached please find the Eastern San Joaquin Groundwater Authority Board of Directors' responses to the Grand Jury Final Report for the following case:

The Eastern San Joaquin Groundwater Authority: A Rubik's Cube of Water Management (Case #0622)
(Separate responses to this report have been submitted by the San Joaquin County Board of Supervisors and the San Joaquin County Auditor-Controller's Office)

If you have any additional questions regarding these responses, please contact me at (209) 468-3100.

Sincerely,

Fritz Buchman, Secretary
Eastern San Joaquin Groundwater Authority

Attachments:

- Responses to Grand Jury Report
- Board Order

c: Eastern San Joaquin Groundwater Authority Board of Directors

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The Eastern San Joaquin Groundwater Authority: Rubik’s Cube of Water Management
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Responses to Findings and Recommendations

1.0 Outreach and Engagement

Findings

F1.2.1 The Eastern San Joaquin Groundwater Authority has provided no public information events on the status of the adoption and implementation of the Groundwater Sustainability Plan since July 2021, leaving the public largely unaware of what the Eastern San Joaquin Groundwater Authority is doing regarding groundwater sustainability and the associated effects and costs of Groundwater Sustainability Plan implementation.

GWA Response: Disagree. On August 30, 2022, the Eastern San Joaquin Groundwater Authority (GWA) held a public meeting to discuss DWR’s comments on the original Eastern San Joaquin Groundwater Sustainability Plan GSP (GSP) submitted in January 2020, the GWA’s responses thereto, and associated revisions to the GSP. The revised GSP was adopted by the Groundwater Sustainability Agencies (GSAs) and submitted to DWR in July 2022.

The Grand Jury’s findings reflect a misunderstanding regarding the outreach and engagement function of the GWA and the requirements of SGMA. The members of the GWA are each Groundwater Sustainability Agencies (GSAs) who have to comply with SGMA. The GWA is not a GSA and has no legal obligation to comply with SGMA. Rather, the GWA provides a platform for the members to coordinate some, but not all, of their SGMA efforts, particularly technical efforts. The GWA’s outreach and engagement was only a small part of the overall effort by the 16 GSAs. Each GSA performed their own outreach and engagement with their stakeholders regarding the formation and adoption of the original and the amended GSP. The GSA outreach and engagement included regular and special board meetings, landowner workshops, newsletters, and other targeted outreach, such as presentations to local groups including Rotary, Kiwanis and the like by sixteen different GSAs in the subbasin.

F1.2.2 The Eastern San Joaquin Groundwater Authority developed but never formally approved or adopted an engagement and public outreach plan, and although the Department of Water Resources is now funding a consultant firm to work with the Board of Directors to develop one, public communications and engagement efforts so far have been limited and ineffective.

GWA Response: Partially agree. Prior to GSP adoption, the GWA and its GSAs performed outreach efforts beyond those required by SGMA, with most of those efforts performed at the individual GSA level. The California Department of Water Resources found that “The

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Plan provides a detailed explanation of how the various interests of groundwater uses and users in the Subbasin were considered in developing the sustainable management criteria and how those interests would be impacted by the established minimum thresholds. (23 CCR § 355.4(b)(4).)”.

Regarding outreach efforts after adoption and submittal of the GSP, the GWA is working to develop a practical Communications and Engagement Plan (C&E Plan) to help educate the public regarding the Eastern San Joaquin Groundwater Sustainability Plan, the activities and accomplishments of the GSAs in the Eastern San Joaquin Sub-basin, and to inform constituents about the role that they play in contributing to overdraft and how they can help achieve sustainability.

The GWA and its GSAs generally recognize that there is a need to inform and educate the public as to the critical nature of groundwater overdraft and the need to fund and implement the program management actions identified in the GSP which will help achieve sustainability. The GWA website has been updated to include an option (Get Connected tab) for the public to subscribe to the GWA mailing list. This engagement feature allows anyone to be alerted to current and upcoming GWA activities. Further, each GSA continues to perform its own public outreach through regular public board meetings, newsletters, workshops, tours and the like. Again, the GWA is not charged with performing all of the public outreach for SGMA for the subbasin. The GWA merely supplements and coordinates efforts of its members on specific topics.

Recommendations

R1.2.1 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors, in consultation with member Groundwater Sustainability Agencies, develop, adopt, and implement a schedule for regular public events to provide information on Groundwater Sustainability Plan adoption and implementation and the associated effects and costs.

GWA Response: This recommendation requires further analysis. GWA decisions regarding outreach strategy will be made following the release of the Communications and Engagement Plan (C&E Plan) recommendations, which is anticipated to be presented to the GWA within the next six months. Based on the final C&E Plan recommendations, the GWA and GSAs will develop specific plans and schedules for the 2025 GSP Update which would include activities such as public events and communications at the GSA or GWA level, or both.

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R1.2.2 By December 31, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors follow the Department of Water Resources-funded communications consultant’s recommendations in developing, adopting, and implementing a communications and outreach plan and that the plan be posted to its website upon adoption.

GWA Response: This recommendation requires further analysis. The consultant’s recommendations will be reviewed by the GWA and the GSAs in developing and considering adoption of their final C&E Plans. These recommendations will be considered in the context of the statutory and regulatory requirements, along with GSP and GWA objectives, priorities, and available resources. The GWA’s adopted C&E Plan will be posted to the GWA website within 10 days after its adoption.

1.1 Efforts to Reach Diverse Population Groups
Findings

F1.3.1 The Eastern San Joaquin Groundwater Authority’s efforts to identify and engage with people who are members of disadvantaged communities have been limited, potentially excluding members of these communities from learning about and having a voice in groundwater sustainability plans.

GWA Response: Partially agree. Attempts were made to engage DAC stakeholders; however, as the Grand Jury notes in its report, there are significant challenges to engaging DAC communities due to limited communications channels and organized stakeholder groups. During recent development of Greater San Joaquin Integrated Regional Water Management Plan, the County expended \$180,000 to implement the Disadvantaged Community Involvement Program and work with the Environmental Justice Coalition for Water on dedicated DAC outreach efforts. These efforts sought to identify DAC stakeholders and engage them regarding various water issues, including groundwater. There was limited DAC participation and engagement with that effort, which went over and above what was required by SGMA.

Additional public input opportunities during GSP development included four public outreach workshops at various locations within the County and a 60-day public review and comment period prior to GSP adoption by the GSAs. These additional outreach efforts are also above and beyond the extensive public noticing and input opportunities required by SGMA, including a published 90-Day Notice of Intent to Adopt a Groundwater Sustainability Plan, publicly noticed and advertised public hearings by all GSAs in

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consideration of GSP adoption by all 16 GSAs, and a 60-day public review and comment period by DWR after GSP submittal. Additionally, all GWA Board and Steering Committee meetings are noticed public meetings where public input is welcome and encouraged.

F1.3.2 Informational materials used to communicate with and inform residents of the subbasin have been in English and Spanish only, thus leaving subbasin residents who speak and read other languages potentially uninformed about the Eastern San Joaquin Groundwater Authority and its activities.

GWA Response: Agree.

Recommendations

R1.3.1 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors develop specific methods for better identifying and engaging with disadvantaged communities in the Eastern San Joaquin Subbasin and include these in the communication and engagement plan currently being developed with the Department of Water Resources.

GWA Response: This recommendation requires additional analysis. Methods to potentially improve disadvantaged community outreach and engagement will be considered in conjunction with C&E Plan development.

R1.3.2 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors develop methods for communicating more effectively with major non-English speaking groups and include these in the communication and engagement plan currently being developed with the Department of Water Resources.

GWA Response: This recommendation requires further analysis. Given the large number of languages utilized within San Joaquin County, it is impractical to translate every communication into all utilized languages. However, communications could potentially be translated to a specific language upon request. Additionally, communications made available via the GWA website potentially could be translated into virtually any desired language using computer-based translators. These issues will be addressed in the pending C&E Plan.

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2.0 Funding, Budgets, and Expenditures

Findings

F2.1.1 The Memorandum of Agreement with Cal Water benefits the County and its taxpayers by reducing the cost allocation paid by the County and incorporates Cal Water’s expertise and support into the Groundwater Sustainability Plan development and implementation.

GWA Response: Agree.

F2.1.2 Zone 2 property fees are collected by the County within the Cal Water-County GSA boundaries. Therefore, it is reasonable and equitable that Cal Water-County GSA receives the same reduction to its member cost allocation as all other County Groundwater Sustainability Agencies to reflect the property fees paid into the Zone 2 fund.

GWA Response: Agree.

2.2 Transparency and Ease of Access to Financial Information

Findings

F2.2.1 Important Eastern San Joaquin Groundwater Authority financial information is not readily available on the Eastern San Joaquin Groundwater Authority website, effectively depriving the public access to this information.

GWA Response: Partially agree. Detailed financial and budget information is available on the GWA website; however, it is noted that facilitating access to this information will be beneficial for interested website users.

Recommendations

R2.2.1 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board modify the Eastern San Joaquin Groundwater Authority website to provide the public clear and convenient access to a more detailed Eastern San Joaquin Groundwater Authority budget with prior-year actuals.

GWA Response: This recommendation has been implemented. Links to detailed budget information have been added to the GWA website.

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3.0 Public Information and Transparency
Findings

F3.1.1 The Eastern San Joaquin Groundwater Authority website does not provide the State-required Financial Transaction Report or a link to the State Controller’s website, which decreases transparency.

GWA Response: Partially agree. Although the website has not historically provided this information, the requirement to do so applies only to independent special districts and is inapplicable to the GWA.

F3.1.2 The Eastern San Joaquin Groundwater Authority website does not list the Board compensation report or a link to the State Controller’s website, reducing transparency.

GWA Response: Disagree. The GWA does not compensate Board members for their services.

F3.1.3 The Eastern San Joaquin Groundwater Authority website does not provide an Enterprise System Catalog, which violates public records and transparency reporting requirements.

GWA Response: Agree.

F3.1.4 The Eastern San Joaquin Groundwater Authority website does not meet the accessibility requirements established by Government Code Section 7405, which could make it difficult for some members of the public to access the site and could expose the Eastern San Joaquin Groundwater Authority to legal action.

GWA Response: Partially agree. The website accessibility provisions prescribed by Government Code Section 7405 apply only to state agencies and are inapplicable to the GWA.

F3.1.5 The Eastern San Joaquin Groundwater Authority website is not updated in a timely manner, causing frustration for site visitors and the appearance of a lack of transparency.

GWA Response: Disagree. Meeting notices/agendas are posted timely in accordance with Brown Act requirements. It is unclear from the Grand Jury Report what other content is required or desired to be posted or updated in a timelier manner.

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Recommendations

R3.1.1 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors update their website to include the current Financial Transaction Report (or link to the State Controller’s website) to ensure compliance with SB 929.

GWA Response: This recommendation has been implemented. However, note that SB 929 applies to independent special districts and is inapplicable to the GWA.

R3.1.2 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors update their website to include a Board compensation report (or link to the State Controller’s website) to ensure compliance with SB 929.

GWA Response: This recommendation has been implemented. Although the GWA does not compensate Board members for their services and SB 929 is inapplicable to the GWA, a link to the State Controller’s website has been added to the GWA website.

R3.1.3 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors update their website to include an Enterprise System Catalog to ensure compliance with SB 272.

GWA Response: This recommendation has been implemented.

R3.1.4 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors ensure that their website complies with the requirements of Government Code Section 7405.

GWA Response: This recommendation has been implemented to enhance public accessibility. However, note that the website accessibility provisions prescribed by Government Code Section 7405 apply only to state agencies and are inapplicable to the GWA.

R3.1.5 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors consult with San Joaquin County’s Information Systems Division to recommend, develop, and implement methodologies to ensure the timely posting of information to the Eastern San Joaquin Groundwater Authority website.

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GWA Response: This recommendation will not be implemented. The County’s Information Systems Division is not involved in managing GWA website content. Additionally, meeting notices/ agendas are posted timely in accordance with Brown Act requirements, and it is unclear from the Grand Jury Report what other content is required or desired to be posted or updated in a timelier manner.

3.1 Board, Standing Committees, and Advisory Committees

Findings

F3.2.1 The Eastern San Joaquin Groundwater Authority Board routinely holds its meetings at times that differ from those stated in its Bylaws and on its website. Together with cancellations and a reduction in the number of Board meetings, this creates confusion and reduces opportunities for public engagement.

GWA Response: Disagree. The GWA Board adopts a schedule of regular meetings near the beginning of each calendar year. The by-laws provide the GWA Board and Secretary flexibility to schedule meetings at different times than the indicated regular meeting times in the by-laws. ESJ Board meeting frequency has varied and will continue to vary depending on the amount and time sensitivity of matters to be considered by the Board.

F3.2.2 The Eastern San Joaquin Groundwater Authority Technical Advisory Committee is a de facto standing committee but does not follow noticing and transparency requirements for its meetings, violating the Brown Act and giving the public no insight or input into its activities.

GWA Response: Disagree. The GWA does not have a standing Technical Advisory Committee. According to Section 4.11 of the Eastern San Joaquin Groundwater Authority JPA, the Board has the power to establish one or more “advisory committees, technical committees, or other committees...” Because of the technical nature of the matters considered by its various ad hoc committees, and because of the advisory role they fulfill for the Board, these committees have often been casually called “technical advisory committees.” Although this casual parlance amongst the GWA Board and staff has clearly led to some confusion regarding the GWA’s committees, the ultimate reality is that the GWA has created numerous ad hoc committees and staff-only working groups to address limited matters prior to bringing them before the Board. Each ad hoc committee has had a limited purpose, a limited duration, and has been dissolved once its tasks have been completed. These various ad hoc committees have been served by different board members and staff members, depending upon the needs of that specific committee.

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Temporary advisory committees (i.e., “ad hoc committees”) serve a limited or single purpose, have a limited duration, and will be dissolved once their specific task is completed. Such temporary advisory committees are not subject to Brown Act. (Gov. Code § 54925(b), *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) Cal.4th 821.) By contrast, standing committees have either: (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body. (Gov. Code § 54925(b).)

In summary, this misunderstanding is fundamentally a product of nomenclature used by the GWA Board and staff. Because the JPA states that the Board can create advisory and technical committees, and because its various ad hoc committees analyze very technical issues and play advisory roles before the Board, the term “technical advisory committee” has been loosely used to describe numerous, discrete ad hoc committees that have been created over the years. Each of these committees has had a limited purpose, a limited duration, are dissolved upon the completion of their task, and are therefore not subject to the Brown Act.

F3.2.3 The Eastern San Joaquin Groundwater Authority does not identify the individuals who serve on the Board of Directors on either its website or its agendas, making it difficult for the public to ascertain who governs the Eastern San Joaquin Groundwater Authority and who from each Groundwater Sustainability Agency sits on their Board.

GWA Response: Agree.

Recommendations

R3.2.1 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors amend its Bylaws and update its website to reflect the actual meeting time of the Board.

GWA Response: This recommendation will not be implemented. The GWA Board adopts a schedule of regular meetings near the beginning of each calendar year. The by-laws provide the GWA Board and Secretary flexibility to schedule meetings at different times than the indicated regular meeting times in the by-laws. ESJ Board meeting frequency has varied and will continue to vary depending on the amount and time sensitivity of matters to be considered by the Board.

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R3.2.2 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors, during a public meeting, discuss and implement options that would enable increased public attendance at its meetings.

GWA Response: This recommendation will be implemented but not by November 1, 2023. At its September 13, 2023, meeting, the GWA Board referred this matter to the Steering Committee to develop recommendations for Board consideration. It is anticipated that the Steering Committee will take this up at its October 11, 2023, meeting and that its recommendations will be presented for consideration at a GWA Board meeting after November 1, 2023.

R3.2.3 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors acknowledge at one of its meetings that the Technical Advisory Committee (TAC) is a standing committee and direct that the TAC begin holding its meetings in compliance with the Brown Act.

GWA Response: This recommendation will not be implemented. The GWA does not have a standing Technical Advisory Committee. Over the years, the GWA has created numerous ad hoc committees and staff-only working groups to address limited matters prior to bringing them before the Board. Each ad hoc committee has had a limited purpose, a limited duration, and has been dissolved once its tasks have been completed. These various ad hoc committees have been served by different board members and staff members, depending upon the needs of that specific committee. Each of these committees has had a limited purpose, a limited duration, are dissolved upon the completion of their task, and are therefore not subject to the Brown Act.

R3.2.4 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors ensure that its website has been updated to include the name, position, and contact information for each person serving on the Board and that this information be kept current.

GWA Response: This recommendation has been implemented. GWA Board member and GSA contact information has been posted on the GWA website and will be kept current.

R3.2.5 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors ensure the name and position of each current Board member be included in the

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agenda of each Board meeting.

GWA Response: This recommendation has been implemented.

3.2 Meeting Minutes

Finding

F3.3.1 The minutes of Board and Steering Committee meetings are difficult to locate on the Eastern San Joaquin Groundwater Authority website and sometimes are not posted for months or at all, resulting in frustration for interested parties and a lack of transparency.

GWA Response: Partially agree. GWA staff is unaware of any instances where minutes were not posted to the website. It is acknowledged that the minutes can be difficult to locate for those unfamiliar with the GWA website, and the minutes are not available on the website until they are approved at the subsequent Board or Steering Committee meeting, which is usually a month or more later.

Recommendation

R3.3.1 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors make changes to the website to ensure all meeting minutes (including drafts) are posted within 10 business days of the meeting adjournment and made easily available to the public.

GWA Response: This recommendation will be implemented, except that minutes will not be posted within the suggested 10-business day timeframe. Meeting minutes for past meetings are now available via a separate link next to the associated meeting agenda link rather than as part of the subsequent agenda package. Subsequent meeting minutes will be posted to the website once approved by the Board or Steering Committee, as appropriate, which will invariably be beyond the requested 10-business day timeframe. Once approved, meeting minutes will be posted to the website within 10 business days. Draft minutes are not required to be posted to the website.

4.0 Administrative Issues

Findings

F4.2 The Eastern San Joaquin Groundwater Authority has insufficient staff support, which negatively impacts its ability to operate efficiently and can result in staff burnout and possible administrative delays and errors.

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GWA Response: Partially agree. The San Joaquin County Water Resources Division (WRD) provides staff support to the GWA and has typically had several vacant positions over the past several years due to recruitment and retention challenges resulting from an extraordinarily tight labor market for public works and water resources professionals. The WRD staffing shortages have been the result of vacant positions rather than insufficient positions being allocated to the WRD. Also, note that GWA had full staff support from the WRD when the administrative oversight was made regarding amending or renewing the Cal Water – County MOA.

Recommendations

R4.2 By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board develop a recommendation and proposal for additional staffing necessary to adequately support its activities and present this proposal to the member Groundwater Sustainability Agencies’ Boards and the County Board of Supervisors for approval.

GWA Response: This recommendation will not be implemented. It is unclear at this time that full staffing of currently allocated WRD positions would result in insufficient staff support for the GWA. Other options besides additional County staff include increased use of consultants, use of GSA staff, and/or other in-kind assistance from GSAs. If the GWA Board determines that additional staffing / consultant resources are needed to support GWA activities, a strategy will be developed at that time.

Before the Board of Directors
Eastern San Joaquin Groundwater Authority

B-23-01

Approve Responses to the 2022-2023 Grand Jury Report

THIS BOARD OF DIRECTORS DOES HEREBY:

1. Approve the responses to the 2022-2023 Grand Jury Reports; and
2. Authorize and direct the Secretary to sign a letter with attached responses to the Presiding Judge of the Superior Court.

I HEREBY CERTIFY that the above order was passed and adopted on September 13, 2023 by the following vote of the Board of Supervisors, to wit:

MOTION: Jason Colombini

AYES: Jeremiah Mecham, David Breitenbucher, Mike Henry, Eric Thorburn, John Herrick, Robert Holmes, Mel Panizza, Robert Rickman, Dante Nomellini, Charlie Swimley, Douglas Smith

NOES:

ABSENT:

ABSTAIN: Keith Bussman

By: Angie Provencio
Angie Provencio, Clerk

Attest: 
Fritz Buchman, Secretary