

INDIAN WELLS VALLEY GROUNDWATER AUTHORITY

Ridgecrest City Hall 100 W California Ave., Ridgecrest, CA 93555 760-499-5000

BOARD OF DIRECTORS

A G E N D A

Thursday February 16, 2017, 10:00 a.m.

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact Alan Christensen at (661) 868-3183. Requests must be made as early as possible and at least one full business day before the start of the meeting. Documents and material relating to an open session agenda items that are provided to the IWVGA Board of Directors prior to a regular meeting will be available for public inspection and copying at Indian Wells Valley Water District, 500 Ridgecrest Blvd, Ridgecrest, CA 93555, or online at www.co.kern.ca.us/groundwater/.

Statements from the Public

The public will be allowed to address the Board during Public Comments about subjects within the jurisdiction of the IWVGA Board and that are NOT on the agenda. No action may be taken on off-agenda items unless authorized by law. Questions posed to the Board may be answered after the meeting or at future meeting. Dialog or extended discussion between the public and the Board or staff will be limited in accordance with the Brown Act. The Public Comments portion of the meeting shall be limited to three (3) minutes per speaker. Each person is limited to one comment during Public Comments.

All remarks and questions should be addressed to the Board as a whole and not to any individual Board member or staff. There will be time after each action item on the agenda to receive comments from the public. Again each speaker will be limited to three (3) minutes. Speakers should be brief and limit their comments to the specific subject being discussed. Persons will be limited to one comment per person unless directed by the Chair.

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. CLOSED SESSION

- a. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION (Government Code Section 54956.9(d)(2)(e)(1)) Number of cases: Two (2) Significant exposure to litigation in the opinion of the Board of Directors on the advice of legal counsel, based on: Facts and circumstances that might result in litigation against the IWVGA but which are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

- b. PUBLIC EMPLOYEE APPOINTMENT - Title: Board Attorney (Government Code Section 54957(b)(1))

4. PUBLIC COMMENTS

This time is reserved for members of the public to address the Board relative to matters NOT on this agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to three minutes per person.

5. SPECIAL PRESENTATIONS

- a. Report by Tim Parker on Technical Progress in the IWV Groundwater Basin

6. CONSENT AGENDA

If the Board would like to discuss any item listed, it may be removed from the Consent Calendar.

- a. **Approve Meeting Minutes of January 19, 2017**

7. DISCUSSION/ACTION TO APPROVE BYLAWS FOR THE IWVGA

8. REPORT ON PLAN OF ACTION AND MILESTONES FOR A GROUNDWATER SUSTAINABILITY PLAN

9. DISCUSSION/ACTION ON A REQUEST FOR PROPOSALS FOR A WATER RESOURCES MANAGER FOR THE IWVGA

10. DISCUSSION/DIRECTION TO INCREASE FREQUENCY OF MEETINGS

11. CLOSING COMMENTS

This time is reserved for comments by Board members and/or staff and to identify matters for future Board business.

12. DATE AND TIME OF NEXT MEETING March 16, 2017, 10 am.

13. ADJOURN

LEGISLATIVE AND POLICY UPDATE – February 10, 2017
Tim Parker, Technical Consultant to Kern County

SGMA UPDATE - www.water.ca.gov/groundwater/sgm/index.cfm

- **Best Management Practices (BMPs)**
 - Final BMPs posted on the DWR website
 - Phase II BMPs may be developed subsequently
 - Guidance Documents
 - Preparation Checklist for Submittal of GSP
 - GSP Annotated Outline
 - Establishing Sustainable Management Criteria (in development)
 - Engagement with Tribal Governments (in development)
 - Stakeholder Engagement and Communications (in development)

- **Basin Boundary Modifications Update**
 - Final basin boundary modifications were released – included in map online
 - 54 requests were submitted – 39 approved, 12 denied, and 3 incomplete
 - Basin Boundary Assessment Tool
 - Basin Boundary Modification Request System

- **Groundwater Sustainability Plans Regulations Update**
 - GSP Regulations Guide
 - 24 Alternative GSPs were submitted to DWR by January 1, 2017
 - Article 6 Plan Evaluation criteria will be used to assess alternative plans functional equivalency
 - Alternative Reporting system web portal available for public review

- **Groundwater Sustainability Agency Formation Notifications (December 1)**
 - 133 separate GSA formation notices
 - 73 have overlap with another GSA in one or more basins that must be resolved by June 30, 2017
 - 50 GSAs are Exclusive GSAs in one or more basins
 - 11 GSAs have an active 90-day period in one or more basins
 - 4 in review
 - 82 basins have GSAs
 - 51 high or medium priority
 - 31 low or very low priority
 - 29 counties have GSAs
 - New DWR portal being developed to coordinate formation of GSAs – online webinar scheduled for January 26th at 0900 hrs and February 10th at 1

- **Water Available for Groundwater Replenishment**
 - DWR has drafted the Report available online at the WAFR website above
 - Focused largely on SWP and CVP deliveries, reliability and uncertainty, and includes WAFR estimates for all ten hydrologic planning areas
 - Analysis done with WEAP model using 1977-2012 precipitation and runoff
 - Provides information on diversion capacity, in-stream flow requirements and replenishment method (in-lieu or managed aquifer recharge)
 - Public workshop scheduled January-February 2017 - final report mid-2017

- **Prop 1 SGMA Funding**
 - \$10M for DACs/ \$90M for grants
 - Counties with Stressed Basins \$6.7M awarded in March 2016
 - Next round anticipated for summer 2017 - \$86.3M available – likely to be one round – 10% to DACs and \$76.3M to plans and projects but no large projects
 - Draft PSP spring 2017 - Final PSP summer 2017
 - Award funding availability - late 2017 to early 2018
- **Bulletin 118**
 - Interim Update 2016 to include basin boundary modifications and COD basins available online
 - Interim Update 2017 with revised basin prioritization available Fall 2017
 - Update 2020 – comprehensive update

California Water Commission www.cwc.ca.gov

- California Water Action Plan 2016 Implementation Report – January 2017
- Overview of 2017 Activities
 - Commission’s Strategic Plan Update
 - Coordination with DWR on Regulations, visits to State Water Project facilities, preparation for implementation of the Water Storage Investment Program

State Water Resources Control Board - Groundwater Program

- Report to Legislature on Feasibility of Using Recycled Water for Drinking Supply
- SWRCB Meeting February 23-24, 2017

State Legislature 2017-2018 Two-Year Session www.leginfo.ca.gov

- January 4th - Legislature reconvened
- February 17th - Last day to introduce bills
- June 2nd - Last day to pass bills out of house of origin
- September 15th - Last day for any bill to be passed
- October 15th - Last day for Governor to sign or veto bills passed by the Legislature on or before Sept. 15 and in the Governor’s possession after Sept. 15

Water Committees

- **Senate Natural Resources and Water Committee – Robert Hertzberg (Chair)**, Stone (Vice Chair), Allen, Atkins, Hueso, Jackson, Monning, Stern and Vidak - Chief Consultant: Bill Craven. Principal Consultant: O’Connor.
- **Assembly Water, Parks, and Wildlife Committee - Eduardo Garcia (Chair)**, Gallagher (Vice Chair), Bigelow, Choi, Chu, Friedman, Gloria, Gomez, Harper, Levine, Mathis, Rubio, Salas, Thurmond, and Wood. Chief Consultant: Freeman.

Pertinent Bills Introduced

- **SB 5** – De Leon- California Drought, Water, Parks, Climate, Coastal
- **SB 44** – Jackson – State Lands- Coastal Hazard and Legacy Oil and Gas Well Removal and Remediation Program
- **SB 57** – Wilk - Water Resources - Permit to Appropriate: Procedure
- **SB 193** – Cannella – SGMA – Spot bill
- **AB 18** – Garcia - California Clean Water, Climate, and Coastal Protection and Outdoor Access For All Act of 2018
- **AB 176** - Salas – Water Project – Friant-Kern Canal

INDIAN WELLS VALLEY GROUNDWATER AUTHORITY

BOARD OF DIRECTORS

MINUTES

Ridgecrest City Hall
100 W California Ave
Ridgecrest, CA 93555

Thursday January 19, 2017, 10:00 a.m.

CALL TO ORDER:

The meeting was called to order by Chairperson Gleason at 10:00 a.m.

ROLL CALL:

Commander Brian Longbottom, Department of the Navy.
Robert Pawalek, BLM.
Bob Page, San Bernardino County.
Peter Brown, Indian Wells Valley Water District.
Chairperson Mick Gleason, Kern County.
Mayor Peggy Breeden, City of Ridgecrest.
Bob Harrington, Inyo County.

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Derek Hoffman followed by a moment of silence.

PUBLIC COMMENTS:

None.

SPECIAL PRESENTATIONS:

- a) **Report by Tim Parker on Technical Progress in the IWV Groundwater Basin**
(available online)

Board Comments:

Public comments:

- b) **Report by Desert Research Institute (DRI) on Groundwater Model from the US Navy** (available online)

Board Comments:

Peter Brown asked if the degradation was linear and if there was an average depth for domestic wells.

Bob Harrington asked if further study would result in substantial revisions for the water budget.

Chair Gleason commented that the Board is acutely aware of the restrictions of the Navy's participation. The Board is also acutely thankful for all contributions from the Navy.

Commander Longbottom stated that the Navy's goal is to work with the Board and move forward.

Public Comments:

Jim Heaser stated that some details that were made by Desert Resource Institute were not found in the documents. Mr. Heaser also stated that Desert Resource Institute is only using one weather station for their data.

Donna Thomas provided a question and comments sheet. Ms. Thomas asked if there was an explanation for the "swap" of figures from Sierra Nevada North and Sierra Nevada South recharge figures from the 2009 Brown and Caldwell model described on page 12 and the groundwater model developed for this study developed on page 13. Ms. Thomas also asked where does the recharge from Freeman Gulch, Cow Heaven Canyon, Sage Canyon, Horse Canyon, and Bird Springs Canyon go since it is blocked from entering the Indian Wells Valley. Ms. Thomas asked if the groundwater model described in this report will be updated if the USGS Recharge Study shows recharge totals estimated to be different from those in this report. Lastly, Ms. Thomas asked if this report and groundwater model address imported water and exported water, or if it can be modified to do so.

Anthony Brown asked how deep was the deepest layer in the model, what is the total volume of groundwater that's currently in storage within the Indian Wells Valley as quantified within the model. Mr. Brown asked how it can be concluded that continued pumping would result in subsidence.

Gene McMurtrey asked for confirmation of numbers that there is an annual recharge of 7,000 acre feet and an annual pumping of about 28,000 acre feet. Mr. McMurtrey asked, in the absence of an imported supply, in order to have a sustainable basin, must there be a reduction in something to go from 28,000 acre feet to 7,000 acre feet.

Eddy Teasdale, on behalf of Meadowbrook, with regards to the Transient Calibration, it was mentioned that they looked at trying to match 73 of the 562 monitoring wells. Was that all they looked at and what portion of those were shallow versus deep. Mr. Teasdale also asked, with regards to the transport model, was there any verification done with the transit model before it was used as a predictive tool.

Stan Rajtora commented that if and when a Technical Advisory Committee is formed will their tasks include reviewing documents like these and providing comments to the Navy. Mr. Rajtora feels it is important to expand the knowledge base that the GSA has so that everyone has an input.

Paul Nugent thanked the Navy and the Desert Research Institute for the data. Mr. Nugent commented that sometimes assumptions are made with the model, and those assumptions can be good or bad. Mr. Nugent expressed hope that the Technical Advisory Committee review the information to ensure that it is sound and the best quality data available.

Commander Longbottom emphasized that the purpose for bringing this presentation to the Board today was to generate questions. The model is as good as the data.

Greg Pohll, Desert Resource Institute, answered as many questions as he was able to.

Motion made by Peter Brown and seconded by Vice-Chair Brown to receive and file agenda item. Motion carried unanimously. (Ayes: Breeden, Brown, Gleason, Harrington, Page Nays: None.)

Presentation by Larry Moxley of Kernco Home and Farm Water LLC on Alternative Water Sources for the Indian Wells Valley

Larry Moxley was present, however Gene McMurtrey provided the presentation.

Ms. Oviatt recommends that if the Board goes through with this sale that the Board takes everything into consideration. Ms. Oviatt suggests that the Indian Wells Valley Groundwater Authority handle the EIR (Environmental Impact Report).

Board comments:

Chair Gleason stated that everything the public has heard today is as far as the Board has been involved as well. The discussion has not advanced in either direction at this point, no decisions have been made and no action has been taken. Chair Gleason asked Mr. McMurtrey to define surplus groundwater and safe yields.

Bob Harrington confirmed that there have been no discussions with the Los Angeles Department of Water and Power (LADWP).

Vice-Chair Breeden asked if studies that support safe yield would be made available to the Board.

Bob Page stated he would have a hard time expressing interest in this item today. Mr. Page agrees that the Board needs to be proactive and look at import options, but also look at other replenishment sources that the Board can consider. Mr. Page also asked for a better understanding from counsel on potential risks to this Authority. Mr. Page asked legal counsel if the Board was to move forward with this and to comply with CEQA, to Mr. Page's understanding the applicant pays fees involved with pursuing this option.

Public Comments:

Earl Wilson stated that he feels this should be an agreement between Groundwater Sustainability Authorities of California City and the County. Mr. Wilson asked what the current designation for that water basin is.

Sophia Merk thanked Ms. Oviatt for mentioning the other users in the Fremont Valley. Ms. Merk agrees that conversations should be held between Groundwater Sustainability Authorities considering the possibility of negative impacts on Fremont Valley.

Anthony Brown commented that today's meeting has consisted of over 2 hours of presentation and this Board has yet to formally establish a Technical Advisory Committee and Policy Advisory Committee so that those Committees may present recommendations to the Board.

Renee Westa-Lusk commented that she has two concerns. She feels this item is premature and questions where the money for an EIR would come from, and other costs. Also, she doesn't feel right taking water from an area where residents may be suffering.

Nick Panzer stated he wanted to get a better feel of how much water is flowing through the Los Angeles aqueduct. Mr. Panzer requests that information be gathered with regards to the LA aqueduct.

Wes Katzenstein asked how imported water would be paid for.

Judie Decker states that the Board should be careful not to get the "horse before the cart" [sic]. The Board has barely established itself as a group, not yet a formal GSA. Ms. Decker states that the bylaws and committees need to be established.

Chair Gleason feels it's a great idea, but does not know if it is feasible. Mr. Gleason is in no mood to shun this idea and welcomes ideas.

Peter Brown agrees that he would like to continue discussing this option and others. Mr. Brown also would like to codify the committees as soon as possible.

Motion made by Peter Brown and seconded by Bob Harrington to receive and file agenda item. Motion carried unanimously. (Ayes: Breeden, Brown, Gleason, Harrington, Page Nays: None.)

e) Report by Lorelei Oviatt on Solar Initiatives in the Indian Wells Valley

Board comments: None.

Public comments:

Judie Decker commented that she thought that this area had gone through a land use adjustment a couple of years ago. Are they planning on looking at zoning in the Indian Wells Valley again?

Wes Katzenstein stated that another possible advantage to the concepts the Board is speaking of is if Indian Wells Valley could supply power to Department of Water and Power then they might do desalination of the ocean and the Indian Wells Valley could import an equivalent amount of water out of the aqueduct.

Earl Wilson commented that the Board should be very careful how they deal with their groundwater rights.

Motion made by Peter Brown and seconded by Bob Harrington to receive and file agenda item. Motion carried unanimously. (Ayes: Breeden, Brown, Gleason, Harrington, Page Nays: None.)

CONSENT CALENDAR:

- a) **Approve Meeting Minutes of November 17, 2016**
- b) **Approve Meeting Minutes of December 8, 2016**

No comment from the Board or Public.

Motion made by Vice-chair Breeden and seconded by Peter Brown to approve consent calendar items. Motion carried unanimously. (Ayes: Breeden, Brown, Gleason, Harrington, Page Nays: None.)

DISCUSSION/ACTION FOR HIRING SPECIAL LEGAL COUNSEL FOR WATER AND GROUNDWATER:

Public comment: None.

Board comment:

Vice-Chair Breeden asked if this item was necessary at this point in time.

Peter Brown questioned if a Request for Quote (RFQ) is necessary in order to look at all the agencies available.

Chair Gleason asked if the Board in fact needed a water lawyer. How would the lawyer's scope be different than the attorneys we already have present?

Motion made by Bob Page and seconded by Peter Brown to nominate Vice-chair Breeden and Bob Page as members of the Ad-hoc Committee to hire Special Legal Counsel for Water and Groundwater. Motion carried unanimously. (Ayes: Breeden, Brown, Gleason, Harrington, Page Nays: None.)

DISCUSSION/ACTION TO CONSIDER FINANCING ALTERNATIVES FOR THE IWVGA:

Board comment:

Bob Page stated, with regards to prior conversations, that it was previously mentioned the possibility of an outside accountant coming in and running a fee study for the Board. Mr. Page asked if that was no longer an option.

Peter Brown asked if this should be a first action item for the Policy Advisory Committee.

Bob Harrington mentioned a letter provided by Gresham Savage, representing Meadowbrook, supporting Director Kingsley's recommendation at the last Indian Wells Valley Groundwater Authority meeting the convenience of public for attendance at workshops.

Public comment:

Joshua Nugent requests that the Board, which has assured him that stakeholders would hold meaningful participation, work on the Policy Advisory Committee and the Technical Advisory Committee. Mr. Nugent stated that there several agenda items that discussed forming Ad-hoc

committees, legal counsel, and hydrogeological services, but there were no agenda items for forming the Policy Advisory Committee and the Technical Advisory Committee. Mr. Nugent asks that the meaningful participation that was promised by the Board be provided as soon as possible.

Derek Hoffman, representing Meadowbrook, stated that a comment letter has been submitted to the Board from Gresham Savage on behalf of Meadowbrook with regards to forming committees. The issue of using an Ad-hoc committee, which is a private, not secret, but a private committee with a handful of staff that could impact every single pumper and property owner in this basin meeting without public input. For that reason these issues need to be addressed even at this early stage. The second issue being raised in the comment letter is the state of the law is not clear. It is not settled on what constitutes a Prop. 218 fee or charge. Mr. Hoffman states that Meadowbrook supports using an open, public committee, such as the Policy Advisory Committee, to address these important issues, not a private Ad-hoc committee.

Stan Rajtora commented that he encourages the Board to put this item before the Policy Advisory Committee as soon as possible. Mr. Rajtora also expressed opposition to an option to add fees to the water to supplement what the Counties actually provide to the table. Mr. Rajtora urges the counties to reach into their pockets and pay for what they are already getting paid to manage, water.

Judie Decker stated that the Water District's system way of dealing with issues in standing committees is effective. Ms. Decker suggests that the Board form committees and get started with the committees meeting and bringing the recommendations back to the Board.

Motion made by Bob Page and seconded by Peter Brown to table agenda item until the next Indian Wells Valley Groundwater Authority meeting as a closed session item. Motion carried unanimously. (Ayes: Breedon, Brown, Gleason, Harrington, Page Nays: None.)

DISCUSSION OF A CONSULTING SERVICES AGREEMENT WITH PARKER GROUNDWATER FOR HYDROGEOLOGIC AND TECHNICAL SERVICES:

Public comment:

Judie Decker asks that the Board consider putting out a Request for Quote (RFQ) for consultants.

Board comment:

Peter Brown states that Tim Parker has been with the County for a long time, before that he was (and continues) with the Water District. Also that Mr. Parker always provides great information and unbiased data.

Chair Gleason commented that this GSA body would be better served if Tim Parker was under the auspices of this Board. Chair Gleason stated support for this item.

Bob Page commented that if a contract is brought at a future meeting, would it include conflict provisions restricting him from working with any other agencies of this Board.

Motion made by Bob Page and seconded by Peter Brown to direct staff to draft a contract with Tim Parker to be presented at the next Board meeting. Motion carried unanimously. (Ayes: Breeden, Brown, Gleason, Harrington, Page Nays: None.)

DISCUSSION/ACTION ON PROJECTS AND OBJECTIVES OF THE IWVGA:

Board comment: Commander Longbottom recommends that the Board works it backwards starting with the deadlines, see where the GSA should be today, and review the progress thus far. This would assist in establishing milestones that must be met to meet the target date.

Public comment:

Anthony Brown commented that the Board is nowhere near ready to go out for a Request for Quote (RFQ) for an engineering firm to start work on the Groundwater Sustainability Plan (GSP). There has not been a Technical Advisory Committee meeting, there is no contract with Tim Parker in place. Mr. Brown recommends getting the cart rolling on the Policy Advisory Committee as well as the Technical Advisory Committee.

Stan Rajtora commented on item #5 with regards to the bylaws. No update has been given for several months. A draft of bylaws needs to be provided so all agencies can review it.

Board comment:

Commander Longbottom suggests the meetings be held more frequently to get the ball rolling.

Bob Page asked if the Board workshop would be on the same day as the regular Board meeting or held on a different day.

Motion made by Commander Longbottom and mirrored by Bob Page and seconded by Vice-chair Breeden to develop a Point of Action and Milestones (POAM) to develop the GSP by 2020. Motion carried unanimously. (Ayes: Breeden, Brown, Gleason, Harrington, Page Nays: None.)

CLOSING COMMENTS:

Board comments:

Bob Harrington expresses apologies for Matt Kingsley not being present.

Vice-chair Breeden recommends that this Board begin meeting on the first as well as the third Thursday of every month. Vice-chair Breeden also commented that she received some information from Ridgecrest Area Board of Realtors, which compels her to ask how we grow in an overdrafted basin. How do we understand the impact of the overdrafted basin. Vice-chair Breeden will ask that the Realtors provide this information so that it may be put online.

DATE AND TIME OF NEXT MEETING:

The next IWVGA meeting will be held February 16, 2017, at 10:00 a.m., in the Council Chambers at Ridgecrest City Hall, 100 W. California Avenue.

CLOSED SESSION: None.

ADJOURN:

Motion was made by Bob Harrington and seconded by Peggy Breeden to adjourn the meeting at 1:42 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lauren Duffy', with a long, sweeping flourish extending to the right.

Lauren Duffy
Clerk of the Board of Directors
Indian Wells Valley Groundwater Authority

January 18, 2017

VIA EMAIL

The Board of Directors of the Indian Wells Valley Groundwater Authority:

Peggy Breeden (City of Ridgecrest)
Peter Brown (Indian Wells Valley Water District)
Mick Gleason (Kern County Supervisor)
Matt Kingsley (Inyo County Supervisor)
Robert Lovingood (San Bernardino County Supervisor)

Re: *January 19, 2017 IWVGA Board Meeting*
Agenda Item 7 – Financing Strategies and Appointing Ad Hoc Committee

To the members of the Board of Directors ("Board") of the Indian Wells Valley Groundwater Authority ("IWVGA"):

On behalf of Meadowbrook, we have two serious concerns regarding the IWVGA staff report for Agenda Item 7 ("Staff Report") of tomorrow's Board meeting that require the Board's immediate attention. First, we respectfully object to the recommendation in the Staff Report that the Board appoint yet another "Ad Hoc Committee" and "direct staff to prepare fee options for the Committee to consider." Second, we respectfully object to the statement in the Staff Report that it is settled law that groundwater pumping fees are considered 'regulatory' by SGMA and that they do not require a Proposition 218 vote.

The Use of an Ad Hoc Finance Committee to Develop Funding Options for Groundwater Management Would Deprive Necessary Public Input and Transparency.

As Meadowbrook indicated at the December Board meeting, funding groundwater management for this basin, including the Groundwater Sustainability Plan, is a matter of significant public concern that could affect every property owner and pumper in the basin. An "ad hoc finance committee," of the Board, which would meet in private, violates the spirit and letter of the Joint Powers Agreement, as well as dozens of public statements and commitments made by this Board, regarding the use of open committees and engaging the public on critical issues.

Again, we reiterate our suggestion that the Board instead utilize a formal open-meeting committee of the IWVGA, such as the Policy Advisory Committee (an open-meeting Committee of the Board that will be formally appointed in just a couple of months) to discuss funding alternatives, and not another private ad hoc committee comprised of two Board members and a handful of staff.

We also strongly support Director Kingsley's recommendation at the December Board meeting that public workshops be held on these financing issues before the Board considers and takes action on any plan for funding groundwater management for this basin.

The Nature of Groundwater Pumping Fees is Not Settled Law.

The second major issue with the Staff Report is that it *inherently includes policy determinations that are based on a highly contested interpretation of unsettled California Constitutional law* regarding the imposition of groundwater fees.

Specifically, the Staff Report states:

"With regard to user fees, the Board has two major choices. The first is a pump fee, which entails charging a fee to those that pump groundwater. The usage charge is assessed by the amount of groundwater pumped. This option also might include well fees to cover the costs like monitoring wells, collecting data, and reporting to the State. These type of fees are considered 'regulatory' by SGMA, and they do not require a Prop 218 vote.

The second option for the Board is to assess a property based fee, which is governed by Proposition 218..."

In reality, the Board has potentially more than "two major choices" and should consider, in an open public process, the full range of alternatives.

The statement that "these types of fees are considered 'regulatory'" is fraught with legal issues of Constitutional magnitude that the *California Supreme Court is presently considering but has not yet decided*. California law is not settled on whether or to what extent groundwater fees are subject to Proposition 218 or Proposition 26, California's Constitutional amendments that impose strict procedural public notice requirements as well as substantive limitations on the imposition of fees, charges and certain taxes. Precisely because there is a current split of authority on these very issues amongst the California District Courts of Appeal, the California Supreme Court has

Board of Directors of the Indian Wells Valley Groundwater Authority
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taken up (but not yet decided) these questions in *City of San Buenaventura v. United Water Conservation Dist.* (Cal. 2015) 189 Cal.Rptr.3d 206 ("*City of San Buenaventura*").

In fact, Kern County submitted its own amicus brief with the California Supreme Court in *City of San Buenaventura*, an action that both acknowledges the importance of that case to SGMA implementation and the need for clarification in complying with Propositions 218 and 26.

The Howard Jarvis Taxpayers Association, among others, have also filed amicus briefs that advocate positions in direct contrast with the outcome advocated by Kern County, and strongly oppose Kern County's interpretation that certain groundwater pumping fees are "regulatory" and exempt from these Constitutional public notice and substantive cost-of-service requirements.

Meadowbrook recognizes the Board's desire to expeditiously establish funding mechanisms for groundwater management in this basin; however, that desire for expedition must not be at the expense of true and early participation by those very members of the public who will likely bear the brunt of those funding costs. The fact that the state of the law is not yet settled only increases the need for meaningful public participation. The use of an ad hoc committee to develop recommendations for the funding of the basin's groundwater management would deprive the public of that meaningful participation and would likely be perceived as renegeing on this Board's commitment to conduct important business publicly and transparently.

We thank the Board in advance for its consideration, and look forward to the public's participating in a robust, open process on these important public issues.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/MDD/DRH

cc: L. Duffy, B. Page, B. Harrington, C. Griffin, J. Sanders,
Z. Scrivner, B. Longbottom, K. Lemieux, P. Hall, J. Worth,
A. Christensen, T. Parker, D. Schaefer, R. McGlothlin,
Meadowbrook, E. Teasdale

IWVGA ADMINISTRATIVE OFFICE

MEMORANDUM

TO: IWVGA Board Members **DATE:** February 16, 2017
FROM: Alan Christensen, IWVGA Staff *AC*
SUBJECT: Authority Bylaws including a revised Policy Advisory Committee composition.

DISCUSSION

The attached Bylaws have been thoroughly reviewed by, and a consensus on an adoption recommendation has been reached by, the Authority's Bylaw Ad Hoc Committee, the Authority's legal team and staff from the General and Association Members.

Please note that these Bylaws are being recommended with a slightly revised Policy Advisory Committee (PAC) composition. These revisions have been made by legal staff in consultation with the Ad Hoc committee to address certain legal issues.

Additionally, please note that while these Bylaws are before your Board for approval today, it has been agreed, and the resolution signifying adoption expressly provides, that this approval will be contingent upon the approval of the General Member Boards. If the by-laws are not subsequently reviewed and approved by any General Member Board, the issue will be brought back before the JPA for action again in March. If they are approved by all General Member Boards, the February action shall be final without additional action.

RECOMMENDATION

- 1) Adopt the attached resolution approving the Bylaws contingent upon approval by all General Member Boards and placing their effective date in suspense until the conclusion of the March GSA meeting;**
- 2) If any General Member Board fails to approve the by-laws, direct staff to place an item on the March agenda so that this Board may receive comments from the General Member Boards, and if appropriate, amend the Bylaws before the adopted resolution becomes effective after the March GSA meeting.**

**BEFORE THE BOARD OF DIRECTORS
INDIAN WELLS VALLEY GROUNDWATER AUTHORITY**

In the matter of:

Resolution No. _____

**RESOLUTION ADOPTING BYLAWS
FOR THE INDIAN WELLS VALLEY
GROUNDWATER AUTHORITY.**

I, _____, Secretary of the Board of Directors for the Indian Wells Valley Groundwater Authority, do certify that the following resolution, on motion of Director _____, seconded by Director _____, was duly passed and adopted by the Board of Directors at an official meeting this 16th day of February, 2017, by the following vote:

AYES:

NOES:

ABSENT:

Secretary of the Board of Directors
Indian Wells Valley Groundwater Authority

RESOLUTION

Section 1. WHEREAS:

- (a) A form of Bylaws to regulate the affairs of the Indian Wells Valley Groundwater Authority has been presented to the Board of Directors; and
- (b) This Board deems it to be in the best interests of the Authority that these Bylaws be adopted as the Bylaws of this Authority; and
- (c) The Governing Board of some of the General Members desire to review and consent to the form of the Bylaws prior to their effective date.

(d) The Authority seeks to adopt the attached Bylaws subject to and conditional upon the subsequent review and approval of the Governing Bodies of the General Members.

Section 2. **IT IS HEREBY RESOLVED** by the Board of Directors of the Indian Wells Valley Groundwater Authority, as follows:

1. Purpose.

This resolution adopts the Bylaws of the Indian Wells Valley Groundwater Authority.

2. Adoption.

The By-Laws of the Indian Wells Valley Groundwater Authority, in the form presented at this meeting and attached hereto and incorporated by reference, are adopted and approved as the Bylaws of this Authority, contingent upon the approval of the General Member Boards. If the by-laws are not subsequently reviewed and approved by any General Member Board, the issue will be brought back before the JPA for action again in March 2017. If they are approved by all General Member Boards, the February 2017 action shall be final without additional action.

Secretary of the Board is directed to place a certified copy of these Bylaws at the Principal Office of the Authority.

4. Effective Date.

The Bylaws shall not become effective until the conclusion of the next regular meeting of the Authority to be held on March 17th, 2017.

DRAFT

BYLAWS

of the

INDIAN WELLS VALLEY

GROUNDWATER AUTHORITY

February 16, 2017

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INDIAN WELLS VALLEY GROUNDWATER AUTHORITY

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PREAMBLE

These Bylaws are adopted pursuant to Section 8.05 of the Joint Exercise of Powers Agreement creating the Indian Wells Valley Groundwater Authority (the "Agreement").

ARTICLE 1. THE AUTHORITY

- 1.1 **NAME OF THE AGENCY.** The name of the Agency created by the Agreement shall be the Indian Wells Valley Groundwater Authority ("Authority").
- 1.2 **SEAL.** The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority and the year 2016 which is the year of its organization.
- 1.3 **PRINCIPAL OFFICE OF THE AUTHORITY.** The principal office of the Authority shall be at the offices of the Indian Wells Valley Water District, located at 500 W. Ridgecrest Boulevard, Ridgecrest, California, 93555.
- 1.4 **AUTHORITY POWERS.** The powers of the Authority are established in accordance with Article VI of the Agreement and vested in the Authority's Board of Directors ("Board"). The Board reserves the right to delegate such powers as are appropriate and permissible by law.

ARTICLE 2. MEETINGS

- 2.1 **OPEN MEETINGS.** Meetings of the Board and any Authority committees shall be held in accordance with the Ralph M. Brown Act (California Government Code sections 54950, et seq.). No action shall be taken by secret ballot at such meetings. Meetings of the Board and Authority committees shall be held within the geographical boundaries of the Basin, except as permitted by the Brown Act.
- 2.2 **REGULAR MEETINGS.** The regular meetings of the Authority shall be held at a location within the geographical boundaries of the Basin on a day and time, which the Authority's Board may from time-to-time designate. In the event a regular meeting would take place on a legal holiday, the meeting may be rescheduled to another date and time as determined by the Board.
- 2.3 **SPECIAL MEETINGS.** Special meetings of the Board shall be conducted pursuant to California Government Code section 54956 and they may be called by the Chairperson, or by the concurrence of any two Primary Directors.
- 2.4 **EMERGENCY MEETINGS.** Emergency meetings of the Board shall be conducted pursuant to California Government Code section 54956.5 and they may be called by the Chairperson, or by the concurrence of any two Primary Directors.
- 2.5 **AGENDA.** The General Manager, in consultation with IWVGA General Counsel and staff of the Members, shall prepare the draft agenda, which must be reviewed and

approved by the General Counsel. In the event there is a disagreement between the General Manager and the General Counsel on any topic, the Board Chairperson will be consulted to provide the necessary direction. The Chairperson or his or her delegate shall then approve the draft agenda before its finalization and posting in accordance with the Ralph M. Brown Act.

- 2.6 QUORUM. A quorum of the Board shall consist of a majority of the Directors representing the then active General Members. In the absence of a quorum, no business may be transacted beyond the adjournment of a meeting by the remaining Directors. A Director shall be deemed present for the determination of a quorum if the Director is present at the meeting in person or if they participate in the meeting telephonically as provided for by the Ralph M. Brown Act.
- 2.7 OFFICIAL ACT. Except as otherwise provided by statute, the Authority shall adopt every official act by a vote of the Board in accordance with the applicable provisions of the Agreement.
- 2.8 VOTING. As set forth in the Agreement, the affirmative vote of a majority of the Board shall be required for the approval of any Board action. In addition, no action may be approved by the Board unless it receives the affirmative vote from no less than two of the then voting Directors representing the County of Kern, the City of Ridgecrest and/or the Indian Wells Valley Water District.

Notwithstanding the foregoing, the Board may approve the Regular Monthly Receivables by a simple majority vote so long as the routine costs and bills making up the Regular Monthly Receivables have not been objected to by any Director. While a Director may voice an oral objection at the meeting, a Director's presence is not required and they may also file an objection in writing prior to the meeting. Likewise, any meeting of the Board may be adjourned by a simple majority vote of the then present Directors.

The voting on formal resolutions, matters drafted to federal, state, county or city agency, and on such other matters as may be requested by a majority of the Authority's Directors, shall be accomplished in a manner that readily signifies the vote of the individual Directors which shall be entered upon the minutes of such meeting.

- 2.9 RULES OF ORDER. All rules of order not otherwise provided for in these Bylaws shall be determined, to the extent practicable, in accordance with "Robert's Rules of Order;" provided, however, that no action shall be invalidated or its legality otherwise affected by the failure or omission to observe or follow "Robert's Rules of Order."
- 2.10 MINUTES. The Secretary shall prepare written minutes of the Board meetings, which shall be available for public inspection when approved by the Board. The record shall contain the votes and abstentions on each matter for which a vote is taken.

ARTICLE 3. OFFICERS

- 3.1 **OFFICERS OF THE BOARD.** Officers of the Authority's Board shall consist of a Chairperson and Vice-Chairperson. The Chairperson shall preside at all meetings of the Board, while the Vice-Chairperson shall perform the duties of the Chairperson in the absence or disability of the Chairperson. The Chairperson and Vice-Chairperson shall exercise and perform such other powers and duties as may be assigned by the Board.
- 3.2 **APPOINTMENT OF OFFICERS OF THE BOARD.** The Chairperson and Vice-Chairperson shall hold office for a term of one year commencing on January 1 of each and every calendar year. Beginning in 2017, the Chairperson and Vice-Chairperson shall rotate annually between the Board members representing the County of Kern, City of Ridgecrest and the Indian Wells Valley Water District. The Board member representing the County of Kern shall be the first Chairperson followed in order by the City of Ridgecrest and then the Indian Wells Valley Water District. The Board member representing the City of Ridgecrest shall be the first Vice-Chairperson followed in order by the Indian Wells Valley Water District and then the County of Kern. Officers of the Board may be removed and replaced at any time, with or without cause by a vote of the Board. In the event that an Officer of the Board loses their position as a Primary Director, that Officer of the Board position shall become vacant and the Board shall elect a new individual to serve the remaining term.
- 3.3 **GENERAL MANAGER.** The General Manager shall have general supervision over the administration of Authority business and affairs, subject to the direction of the Board. The General Manager or designee may execute contracts, deeds and other documents and instruments as authorized by the Board.
- Until an General Manager is appointed, and except for the Authority's General Counsel and Treasurer functions, Authority administration and management will be conducted using a collaborative staffing model in which the professional and technical staff of the member agencies work together to provide staff leadership, management and administration of the Authority.
- 3.4 **BOARD SECRETARY.** The Secretary shall be elected by and serve at the discretion of the Board. The Secretary shall keep the administrative records of the Authority, act as secretary at meetings of the Authority, recording all votes and keep a record of the proceedings of the Authority to be kept for such purpose, and perform all duties incident to the Secretary's office. The Secretary shall maintain a record of all official proceedings of the Board. The Secretary shall also establish and maintain a list of persons interested in receiving notices regarding plan preparation, meeting announcements, and availability of draft plans, maps, and other relevant documents pursuant to Water Code Section § 10723.4.
- 3.5 **GENERAL COUNSEL.** The Authority's General Counsels shall be the attorneys appointed by the County of Kern, the City of Ridgecrest and the Indian Wells Valley

Water District. The primary responsibility to act as the Authority's General Counsel during public meetings shall rotate annually and be in coordination with who is the then acting Chairperson. For example, when the Chairperson is Kern County's representative, Kern County's attorney will act as the Authority's General Counsel during public meetings, or as otherwise directed by the Board. General Counsel shall be appointed by the Board, and shall be directly responsible to the Board. The General Counsel shall give advice or written opinions as needed and/or directed by the Board, and shall prepare proposed resolutions, laws, rules, contracts and other legal documents for the Authority when requested to do so by the Authority. The General Counsel shall attend to all lawsuits and other matters to which the Authority is a part or in which the Authority may be legally interested and do such other things pertaining to the General Counsel's office as the Authority may request. Authority Counsel will recommend appointment of Special Counsel for matters involving more specialized legal service as required. The Board will set the compensation of Special Counsel.

- 3.5.1 RETAINER AGREEMENTS. The Board of Directors shall execute a retainer agreement with the Authority's General Counsels which shall expressly provide that each attorney acting as General Counsel shall be afforded the full and complete opportunity to represent their General Member in any dispute or action regardless of any actual or perceived conflicts with the Authority or any of its other Members. Additionally, the General Counsel shall, when deemed appropriate or called upon, seek the advice and consultation of the legal counsels, and possibly staff, from Members of the Authority on legal issues facing the Authority; in such an instance, the communications shall be confidential and protected to the fullest extent possible in law and said communications shall not in any way preclude staff or legal counsels from fulfilling their duties and obligations to their Member, including representation in any dispute or action.
- 3.6 OFFICER COMPENSATION. Officers of the Authority which are not Directors shall receive compensation as designated by the Board in written contract. When, and only if, specifically called upon by the Board in advance, non-Director officers may receive reimbursement of their actual and necessary expense at the then current IRS reimbursement rate.
- 3.7 FISCAL AGENT AND TREASURER. The County of Kern shall serve as the Fiscal Agent and Treasurer for the Authority unless otherwise directed by a vote of the Board. The Fiscal Agent shall be depository for and shall have the responsibility for all money of the Authority from whatever source. All funds of the Authority shall be strictly and separately accounted for and regular reports shall be rendered of all receipts and disbursements during the Fiscal Year as designated by the Board. The books and records of the Authority shall be open to inspection by the General and Associate Members and the Treasurer shall provide strict accountability of said funds in accordance with Government Code sections 6505 and 6505.5 and all other applicable provisions of law, including any amendments thereto.

- 3.8 WATER RESOURCES MANAGER. The Authority shall hire a consultant or consultants with the appropriate technical background, expertise and experience to prepare and implement a Groundwater Sustainably Plan (“GSP”). This position shall be named the Water Resources Manager and they shall be responsible for preparing and implementing the GSP as directed by the Board. An engineering, or other technical, firm may perform these duties, but, in the event that they are performed by a firm, an individual shall be appointed to serve as the primary project manager. In preparing the GSP, the Authority’s Water Resources Manager will consult with the Policy Advisory Committee and the Technical Advisory Committee as directed by the Board. The Authority’s Water Resources Manager shall also provide technical information and reports to the Board as needed and/or directed by the Board. Following the adoption of the GSP, the Authority’s Water Resources Manager shall be responsible for all work needed to implement the terms of the GSP as directed by the Board, including, if so directed, the preparation of an annual report.

**ARTICLE 4. DIRECTOR COMPENSATION
AND EXPENSES**

- 4.1 COMPENSATION. Currently, the Directors are not compensated for their service by the Authority. In the event that changes, the Board will set Director compensation pursuant to a written policy adopted by the Board and included herein.
- 4.2 EXPENSES. If previously approved by the Board, a Director shall receive actual, reasonable and necessary reimbursement for travel, meals, lodging, registration and similar expenses incurred on Authority business. The reimbursement rates for lodging shall not exceed the posted rates for a trade conference, but if lodging at the posted rates is not available, the reimbursement rate shall be comparable to the posted rates. For travel of 250 miles or less, directors shall be reimbursed at the IRS mileage rate. For travel over 250 miles, directors shall be reimbursed at a rate determined by the Board. As used herein, “transportation” includes travel to and from terminals. Automobile rental expenses shall be approved in advance. Reimbursement for meals, other than alcoholic beverages, shall be at the rate established by the IRS or actual reasonable cost not to exceed \$90 per day. Directors may declare the amount of the meal under penalty of perjury in lieu of receipts if the amount is less than the IRS rate. Claims for expense reimbursement shall be submitted to the Board on forms provided by the Authority within 30-days after the expense has been incurred. The General Manager shall determine whether the claim satisfies the requirements of this section and if the claim is denied, the claimant may appeal to the Board.

ARTICLE 5. COMMITTEES

- 5.1 ESTABLISHMENT OF STANDING COMMITTEES. In accordance with Section 7.04 of the Agreement, the Board may from time to time establish standing committees for the purpose of making recommendations to the Board on the various activities of the Authority. The establishment of any standing committee and its duties shall require a vote of the Board and the activities of the standing committee shall be subject to the provisions of the Ralph M. Brown Act (California Government Code sections 54950, et

seq.). Standing committees shall exist for the term specified in the action creating the committee and the Board may dissolve a committee at any time through a vote of the Board.

- 5.2 CONDUCT OF STANDING COMMITTEES. All standing committee meetings shall be noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code sections 54950, et seq.). The Board shall appoint the respective committee chairs in consultation with the Committee members and the Board may further establish rules of conduct for said standing committees. Each standing committee may establish a time and place for regular meetings and may call special meetings in the same manner as the Board. Standing committee meeting minutes shall be recorded and upon approval shall be distributed to the Board.
- 5.3 STANDING COMMITTEE MEMBERSHIP. Standing committee membership and appointments shall be at the Board's sole discretion. Likewise, the Board shall have the sole discretion to remove or admonish any member, or members, of any standing committee at any time. The Board may, at its sole discretion, appoint an alternate to any standing committee.
- 5.4 STANDING COMMITTEE DIRECTION. In establishing a standing committee, the Board shall provide specific direction to the standing committee as to its tasks, expected duration for completion of its tasks, and a summary of the resources, including staff or consultant support available to the standing committee in performing its tasks.
- 5.5 POLICY ADVISORY COMMITTEE. The Board shall establish a standing committee named the Policy Advisory Committee (PAC). The PAC, when specifically designated and assigned by the Board, will advise the Board on the development and implementation of the GSP. The Board shall establish the time and place for PAC meetings in consultation with the members of the PAC.
- 5.6 POLICY ADVISORY COMMITTEE MEMBERSHIP. The Board shall appoint the PAC members as set forth in this Article 5 and nothing herein shall be interpreted to prevent the Board from modifying PAC membership or removing a particular PAC member if the Board so desires. PAC members must be water users within the Authority's boundary or represent agencies/organizations who are PAC members. The Board shall have the sole discretion to approve or disapprove of a particular individual's representation on the PAC regardless of the agency or organization they represent.

The initial PAC membership shall consist of the following non-voting members:

- 1 representative from the Indian Wells Valley Water District
- 1 representative from the Department of the Navy
- 1 representative from the Bureau of Land Management
- 1 representative from Kern County Planning and Natural Resources Dept.

The initial PAC membership shall consist of the following voting members:

- 2 representatives from Large Agriculture
- 1 representative from Small Agriculture
- 2 representatives from Business Interests
- 2 representatives from Domestic Well Owners
- 1 representative from Eastern Kern County Resource Conservation District
- 1 representative for wholesaler and industrial user

- 5.7 TECHNICAL ADVISORY COMMITTEE. The Board shall establish a standing committee named the Technical Advisory Committee (TAC). The TAC, when specifically designated and assigned by the Board, will advise the Board and the Authority's Water Resource Manager on the development and implementation of the GSP
- 5.8 TECHNICAL ADVISORY COMMITTEE MEMBERSHIP. [Reserved]
- 5.9 AD HOC COMMITTEE. This Article 5 shall not apply to ad hoc committees which shall be subject to the provisions of the Ralph M. Brown Act (California Government Code sections 54950, et seq.).

ARTICLE 6. BUDGET AND FINANCES

- 6.1 BUDGET. The Authority shall operate pursuant to an operating budget adopted in accordance with Section 9.07 of the Agreement. The Authority shall endeavor to operate each year pursuant to an annually balanced budget so that projected annual expenses do not exceed projected annual revenues. If the General Manager or Chairperson determines the approved budget is inadequate, he or she shall submit recommended modifications to the Board for consideration and action. The General Manager shall implement the approved or revised budget, provided, all expenditures for capital improvements shall be approved by the Board before they are undertaken.
- 6.2 APPROVAL OF WARRANTS AND SIGNATURE OF CHECKS. The Board shall approve all warrants and authorize issuance of checks in payment thereof. A check register showing the check number, payee, amount, and the purpose of each check, as prepared by the Treasurer, will be sent to the Board as required by the Brown Act. Checks in payment of utility bills, postage, payroll, payroll taxes, credit union collections, petty cash, emergency repairs and invoices subject to discount and interfund transfers may be disbursed prior to Board approval. Such items shall be set forth on the next regular check register and presented to the Board.
- 6.3 GENERAL AND SPECIAL BOOKS OF ACCOUNT. The Treasurer shall maintain books of account in accordance with accepted accounting principles showing the status of all monies received and disbursed. Such general and special fund accounts shall be maintained as are necessary to accomplish the purpose of the Authority.

- 6.4 FUND DEPOSITORIES. Currently the County of Kern is Fiscal Agent and Treasurer for the Authority and all funds of the Authority are deposited with the County of Kern. If the Board desires to designate a new depository for Authority funds, the Board shall do so through a written policy included herein.

ARTICLE 7. DEBTS AND LIABILITIES

- 7.1 DEBTS AND LIABILITIES. Except as may be specifically provided for in the Agreement and/or California Government Code Section 895.2 as amended or supplemented, the debts, liabilities and obligations of the Authority are not and will not be the debts, liabilities or obligations of any or all of the Members. However, nothing in this Article or in the Agreement prevents, or impairs the ability of, a Member or Members, from agreeing, in a separate agreement, to be jointly and/or severally liable, in whole or in part, for any debt, obligation or liability of the Authority, including but not limited to, any bond or other debt instrument issued by the Authority.

ARTICLE 8. RECORDS RETENTION

- 8.1 RECORDS RETENTION POLICY. The Authority shall adopt a records retention policy. This policy will provide criteria and procedures for the retention or destruction of Authority records.
- 8.2 MAINTENANCE AND INSPECTION OF AGREEMENT AND BYLAWS. The Authority will keep at its principal executive office the original or copy of the Agreement and these Bylaws as amended to date, which will be open to inspection by the Authority or any Member at all reasonable times during office hours.
- 8.3 INSPECTION RIGHTS OF MEMBERS. Provided that upon the advice of General Counsel no legal conflict exists, any Member may inspect any record of the Authority, including but not limited to the accounting books and records and minutes of the proceedings of the Board and committees of the Board, at any reasonable time. A designated representative of the entity may make any inspection and copying under this Section and the right of inspection includes the right to copy.
- 8.4 INSPECTION BY DIRECTORS. Provided that upon the advice of General Counsel no legal conflict exists, any Director may inspect any record of the Authority, including but not limited to the accounting books and records and minutes of the proceedings of the Board and committees of the Board, at any reasonable time. A designated representative of the entity may make any inspection and copying under this Section and the right of inspection includes the right to copy.
- 8.5 INSPECTION BY THE PUBLIC. As directed and permitted by law, Authority records are open to inspection by the public.

ARTICLE 9. CODE OF ETHICS

- 9.1 **DECLARATION OF POLICY.** The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a code of ethics for all officers and employees, whether elected or appointed, paid or unpaid. This article establishes ethical standards of conduct for Authority officers and employees by setting forth those acts or actions that are incompatible with the best interests of the Authority and by directing the officers' disclosure of private financial or other interests in matters affecting the Authority.
- 9.2 **RESPONSIBILITIES OF PUBLIC OFFICE.** Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the United States and State Constitution and to carry out impartially the laws of the nation, State, and the Authority, thus to foster respect for all governments. They are bound to observe, in their official acts, the highest standards of performance and to discharge faithfully the duties of their office, regardless of personal considerations. Recognizing that the public interests must be their primary concern, their conduct in both their official and private affairs should be above reproach.
- 9.3 **DEDICATED SERVICE.** Officers and employees owe a duty of loyalty to the political objectives expressed by the electorate and the programs developed by the Board to attain those objectives. Appointive officers and employees should adhere to the rules of work and performance established as the standards for their positions by the appropriate authority. Officers and employees should not exceed their authority or breach the law, or ask others to do so, and owe a duty to cooperate fully with other public officers and employees unless prohibited from so doing by law or by the officially recognized confidentiality of their work.
- 9.4 **FAIR AND EQUAL TREATMENT.** The canvassing of members of the Board, directly or indirectly, to obtain preferential consideration in connection with any appointment to the municipal service, shall disqualify the candidate for appointment except with reference to positions filled by appointment by the Board. Officers and employees shall not request or permit the use of Authority-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such services are available to the public generally or are provided for the use of such officer or employee in the conduct of official business. Officers and employees shall not grant special consideration, treatment or advantage to a member of the public beyond what is available to every other member of the public.
- 9.5 **POLITICAL ACTIVITIES.** Officers and employees shall not solicit or participate in soliciting an assessment; subscription of contribution to a political party during working hours on property owned by the Authority and shall conform to Government Code

Sections 3202 and 3203. Officers and employees shall not promise appointment to a position with the Authority.

- 9.6 EX PARTE COMMUNICATIONS. A written communication received by an officer or employee shall be made part of the record of decision. A communication concerning only the status of a pending matter shall not be regarded as an ex parte communication.
- 9.7 AVOIDANCE OF IMPRESSIONS OF CORRUPTIBILITY. Officers and employees shall conduct their official and private affairs so as not to give a reasonable basis for the impression that they can be improperly influenced in performance of public duties. Officers and employees should maintain public confidence in their performance of the public trust in the Authority. They should not be a source of embarrassment to the Authority and should avoid even the appearance of conflict between their public duties and private interests.
- 9.8 NO DISCRIMINATION IN APPOINTMENTS. No person shall be appointed to, removed from, or in any way favored or discriminated against with respect to any appointive administrative office because of such person's race, color, age, religion, gender identification, national origin, political opinions, affiliations, or functional limitation as defined by applicable State or federal laws, if otherwise qualified for the position or office. This provision shall not be construed to impair administrative discretion in determining the requirements of a position or in a job assignment of a person holding such a position, subject to review by the Board.
- 9.9 AUTHORITY ALLEGIANCE AND PROPER CONDUCT. Officers and employees shall not engage in or accept any private employment, or render services for private interest, when such employment or service is incompatible with proper discharge of official duties or would tend to impair independence or judgment or action in the performance of those duties. Officers and employees shall not disclose confidential information concerning the property, government, or affairs of the Authority, and shall not use confidential information for personal financial gain. Officers and employees shall not accept a gift in excess of limits established by state law. Officers and employees shall not accept any gift contingent upon a specific action by the Board. Officers and employees shall not appear on behalf of business or private interests of another before the Board where such appearance would create a potential of having to abstain from Officers participating on that matter or be incompatible with official duties. Officers and employees shall not represent a private interest of another person or entity in any action or proceeding against the interest of the Authority in any litigation to which the Authority is a party. A Director may appear before the Authority on behalf of constituents in the course of duties as a representative of the electorate or in the performance of public or civic obligations.
- 9.10 PENALTIES. In addition to any other penalties or remedies provided by law, violation of this Article shall constitute a cause for suspension, removal from office or employment or other disciplinary action after notice and hearing conducted by the appropriate appointed authority or, in the case of the Board, a majority of such Board.

ARTICLE 10. CLAIMS AGAINST THE AUTHORITY

10.1 [RESERVED]

ARTICLE 11. PURCHASING POLICY

11.1 [RESERVED]

ARTICLE 12. INVESTMENT POLICY

12.1 [RESERVED]

ARTICLE 13. CONFLICT OF INTEREST CODE

13.1 [RESERVED]

ARTICLE 14. AMENDMENT

14.1 AMENDMENT. These Bylaws may be amended from time to time by resolution of the Board.

ARTICLE 15. DEFINITIONS AND CONSTRUCTION

15.1 DEFINITIONS AND CONSTRUCTION. Unless specifically defined in these Bylaws, all defined terms shall have the same meaning ascribed to them in the Agreement. If any term of these Bylaws conflicts with any term of the Agreement, the Agreement's terms shall prevail, and these Bylaws shall be amended to eliminate such conflict of terms. Unless the context or reference to the Agreement requires otherwise, the general provisions, rules of construction and definitions in the California Civil Code will govern the interpretation of these Bylaws.

IWVGA ADMINISTRATIVE OFFICE

MEMORANDUM

TO: IWVGA Board Members **DATE:** February 16, 2017
FROM: Alan Christensen, IWVGA Staff *AC*
SUBJECT: **Report on Plan of Action and Milestones (POAM) for a Groundwater Sustainability Plan**

DISCUSSION

At the January 19, 2017 board meeting, the Board directed that a Plan of Action and Milestones (POAM) be developed. The Navy, who suggested development of a POAM, will provide guidance and assistance and staff will take the lead on preparing the POAM.

The initial Draft POAM timeline is attached for the Board's review. It should be noted that IWVGA staff has not had sufficient time to review and discuss the draft timeline, so additional comments and revisions should be expected.

Staff also anticipates that the Water Resource Planner will have significant input into the POAM moving forward, so the POAM is expected to be updated throughout the GSP development process.

PRELIMINARY GROUNDWATER SUSTAINABILITY PLAN OUTLINE

Executive Summary (Reg. § 354.4)

1.0 Introduction

1.1 Purpose of the Groundwater Sustainability Plan (GSP or Plan)

1.2 Sustainability Goal

1.3 Agency Information (Reg. § 354.6)

1.3.1 Organization and Management Structure of the Groundwater Sustainability Agency (GSA or Agency)

1.3.2 Legal Authority of the GSA

1.3.3 Estimated Cost of Implementing the GSP and the GSA's Approach to Meet Costs

1.4 GSP Organization

- Description of how the GSP is organized
- Preparation Checklist for GSP Submittal

2.0 Plan Area and Basin Setting

2.1 Description of the Plan Area (Reg. § 354.8)

2.1.1 Summary of Jurisdictional Areas and Other Features (Reg. § 354.8 b)

- Map(s) (Reg. § 354.8 a):
 - Area covered by GSP
 - Adjudicated areas, other Agencies within the basin, and areas covered by an Alternative
 - Jurisdictional boundaries of federal or State land
 - Existing land use designations
 - Density of wells per square mile

2.1.2 Water Resources Monitoring and Management Programs (Reg. § 354.8 c, d, e)

- Description of water resources monitoring and management programs
 - Description of how monitoring networks of those programs will be incorporated into the GSP
 - Descriptions of how those programs may limit operation flexibility in the basin
 - Description of conjunctive use programs

2.1.3 Land Use Elements or Topic Categories of Applicable General Plans (Reg. § 354.8 f)

- Summary of general plans and other land use plans
 - Information could include crop types and acreages, urban land designation, and identification of open spaces.
- Description of how implementation of the GSP may change water demands or affect achievement of sustainability and how the GSP addresses those effects
- Description of how implementation of the GSP may affect the water supply assumptions of relevant land use plans
- Summary of the process for permitting new or replacement wells in the basin
- Information regarding the implementation of land use plans outside the basin that could affect the ability of the Agency to achieve sustainable groundwater management

2.1.4 Additional GSP Elements (Reg. § 354.8 g)

- Control of saline water intrusion
- Wellhead protection

- Migration of contaminated groundwater
- Well abandonment and well destruction program
- Replenishment of groundwater extractions
- Conjunctive use and underground storage
- Well construction policies
- Groundwater contamination cleanup, recharge, diversions to storage, conservation, water recycling, conveyance, and extraction projects
- Efficient water management practices
- Relationships with State and federal regulatory agencies
- Land use plans and efforts to coordinate with land use planning agencies to assess activities that potentially create risks to groundwater quality or quantity
- Impacts on groundwater dependent ecosystems

2.1.5 Notice and Communication (Reg. § 354.10)

- Description of beneficial uses and users in the basin
- A Communications Section that describes:
 - Decision-making processes
 - Public engagement opportunities
 - Encouraging active involvement
 - Informing the public on GSP implementation progress

2.2 Basin Setting

2.2.1 Hydrogeologic Conceptual Model (Reg. § 354.14)

- Graphical and narrative description of the physical components of the basin
- At least two scaled cross-sections
- Map(s) of physical characteristics
 - Topographic information
 - Surficial geology
 - Soil characteristics
 - Delineation of existing recharge areas that substantially contribute to the replenishment of the basin, potential recharge areas, and discharge areas
 - Surface water bodies
 - Source and point of delivery for local and imported water supplies

2.2.2 Current and Historical Groundwater Conditions (Reg. § 354.16)

- Groundwater elevation data
- Estimate of groundwater storage
- Seawater intrusion conditions
- Groundwater quality issues
- Land subsidence conditions
- Identification of interconnected surface water systems
- Identification of groundwater-dependent ecosystems
 - Including potentially related factors such as instream flow requirements, threatened and endangered species, and critical habitat.

2.2.3 Water Budget Information (Reg. § 354.18)

- Description of inflows, outflows, and change in storage
- Quantification of overdraft (as applicable)

- Estimate of sustainable yield
- Quantification of current, historical, and projected water budget
- Description of surface water supply used or available for use for groundwater recharge or in-lieu use

2.2.4 Management Areas (as Applicable) (Reg. § 354.20)

- Reason for creation of each management area
- Level of monitoring and analysis
- Description of management areas
- Explanation of how management of management areas will not cause undesirable results outside the management area

3.0 Sustainable Management Criteria

3.1 Sustainability Goal (Reg. § 354.24)

- Description of sustainability goal, including:
 - Information from the basin setting used to establish the sustainability goal
 - Discussion of the measures that will be implemented to ensure that the basin will be operated within its sustainable yield
 - Explanation of how the sustainability goal is likely to be achieved within 20 years of Plan implementation and is likely to be maintained through the planning and implementation horizon

3.2 Measureable Objectives (Reg. § 354.30)

- Description of each measureable objective and how the measurable objectives were established for each relevant sustainability indicator
- Description of how a reasonable margin of safety was established for each measureable objective
- Description of a reasonable path to achieve and maintain the sustainability goal including a description of interim milestones for each relevant sustainability indicator
 - Measurable Objective for Sustainability Indicator 1
 - Interim Milestone at 5 years
 - Interim Milestone at 10 years
 - Interim milestone at 15 years
 - Milestone at 20 years
 - Measurable Objective for Sustainability Indicator 2
 - Interim Milestone at 5 years
 - Interim Milestone at 10 years
 - Interim milestone at 15 years
 - Milestone at 20 years
 - Measurable Objective for Sustainability Indicator X
- If management areas are used, a description of (Reg. § 354.20 b):
 - The measurable objectives established for each management area, and an explanation of the rationale for selecting those values, if different from the basin at large.
 - An explanation of how the management area can operate under different measurable objectives without causing undesirable results outside the management area, if applicable.

3.3 Minimum Thresholds (Reg. § 354.28)

- Description of each minimum threshold and how they were established for each relevant sustainability indicator
- Relationship for each sustainability indicator
- Description of how minimum thresholds have been selected to avoid causing undesirable results
- Description of how minimum thresholds may affect the interests of beneficial uses and users of groundwater or land uses and property interests.
- Standards related to sustainability indicators
- How each minimum threshold will be quantitatively measured for each relevant sustainability indicator
- If management areas are used, a description of (Reg. § 354.20 b):
 - The minimum thresholds established for each management area, and an explanation of the rationale for selecting those values, if different from the basin at large.
 - An explanation of how the management area can operate under different minimum thresholds without causing undesirable results outside the management area, if applicable.

3.4 Undesirable Results (Reg. § 354.26)

- Description of undesirable results for any of the sustainability indicators
- Cause of groundwater conditions that would lead to undesirable results
- Criteria used to define undesirable results based on minimum thresholds
- Potential effects on the beneficial uses and users of groundwater, on land uses and property interests, and other potential effects that may occur or are occurring from undesirable results

3.5 Monitoring Network

3.5.1 Description of Monitoring Network (Reg. § 354.34)

- Description of how the monitoring network is capable of collecting sufficient data to demonstrate short-term, seasonal, and long-term trends in groundwater and related surface conditions, and yield representative information about groundwater conditions as necessary to evaluate Plan implementation
- Description of monitoring network objectives including explanation of how the network will be developed and implemented to monitor:
 - Groundwater and related surface conditions
 - Interconnection of surface water and groundwater
- Description of how implementation of the monitoring network objectives demonstrate progress toward achieving the measurable objectives, monitor impacts to beneficial uses or users of groundwater, monitor changes in groundwater conditions, and quantify annual changes in water budget components
- Description of how the monitoring network is designed to accomplish the following for each sustainability indicator:
 - Chronic Lowering of Groundwater Levels. Demonstrate groundwater occurrence, flow directions, and hydraulic gradients between principal aquifers and surface water features
 - Reduction of Groundwater Storage. Estimate the change in annual groundwater in storage
 - Seawater Intrusion. Monitor seawater intrusion
 - Degraded Water Quality. Determine groundwater quality trends
 - Land Subsidence. Identify the rate and extent of land subsidence
 - Depletions of Interconnected Surface Water. Calculate depletions of surface water caused by

groundwater extractions

- Description of how the monitoring plan provides adequate coverage of the sustainability indicators
- Density of monitoring sites and frequency of measurements required to demonstrate short-term, seasonal, and long-term trends
- Scientific rationale (or reason) for site selection
- Consistency with data and reporting standards
- Corresponding sustainability indicator, minimum threshold, measurable objective, and interim milestone
- Location and type of each site on a map
- If management areas are used, a description of the level of monitoring and analysis appropriate for each management area. (Reg. § 354.20 b)

3.5.2 Monitoring Protocols for Data Collection and Monitoring (Reg. § 352.2)

- Description of technical standards, data collection methods, and other procedures or protocols to ensure comparable data and methodologies.

3.5.3 Representative Monitoring (Reg. § 354.36)

- Description of representative sites if designated
- Demonstration of adequacy of using groundwater elevations as proxy for other sustainability indicators
- Adequate evidence demonstrating site reflects general conditions in the area

3.5.4 Assessment and Improvement of Monitoring Network (Reg. § 354.38)

- Review and evaluation of the monitoring network
- Identification and description of data gaps
- Description of steps to fill data gaps
- Description of monitoring frequency and density of sites

4.0 Projects and Management Actions to Achieve Sustainability Goal (Reg. § 354.44)

4.1 Project #1 Description

- Measureable objective that is expected to benefit from the project or management action
- Circumstances for implementation
- Public noticing
- Overdraft mitigation projects and management actions
- Permitting and regulatory process
- Time-table for initiation and completion, and the accrual of expected benefits
- Expected benefits and how they will be evaluated
- How the project or management action will be accomplished. If the projects or management actions rely on water from outside the jurisdiction of the Agency, an explanation of the source and reliability of that water shall be included.
- Legal authority required
- Estimated costs for the projects and managements and plans to meet those costs (economic analysis and finance strategy for projects and management actions)
- Management of groundwater extractions and recharge
- Relationship to additional GSP elements as described in Water Code §10727.4.

4.2 Project #2 Description

4.3 Project #X Description

5.0 Plan Implementation

5.1 Estimate of GSP Implementation Costs (*Reg. § 354.6*)

5.2 Schedule for Implementation

5.3 Annual Reporting

- GSA's plan for required annual reporting

5.4 Periodic Evaluations

- GSA's process for required periodic evaluations

6.0 References and Technical Studies (*Reg. § 354.4*)

Appendices

- Interbasin and Coordination Agreements (as applicable) (*Reg. § 357*)
- Contact Information for Plan Manager and GSA Mailing Address (*Reg. § 354.6*)
- List of Public Meetings (*Reg. § 354.10*)
- Technical Appendices
- Groundwater Model Documentation
- Comments and Responses (*Reg. § 354.10*)

Reference: California Department of Water Resources "Groundwater Sustainability Plan (GSP) Annotated Outline, December 2016.

DRAFT

IWVGA ADMINISTRATIVE OFFICE

Staff Report

TO: IWVGA Board Members **DATE:** February 16, 2017
FROM: Alan Christensen, IWVGA Staff *AC*
SUBJECT: Approval of a Request for Proposals for a Water Resources Manager for the IWVGA

DISCUSSION

As we've discussed many times, the IWV Groundwater Authority has a primary focus of developing a Groundwater Sustainability Plan (GSP). To drive that effort, a water professional or firm of professionals is needed to oversee, guide and direct the technical work related to preparation of the GSP. Staff has prepared a Request for Proposals (RFP) for the Board to consider. The objective of this document, when completed and approved, is to send to qualified groundwater professionals and gauge their interest and their approach to leading and accomplishing the GSP effort.

The draft RFP for your consideration uses the title Water Resources Manager. This title is fairly general but the detailed description in the document provides more specific requirements of the position and the project. The Water Resources Manager would work closely with the advisory committees of the IWVGA.

Staff requests that the Board provide feedback on the document, and it is our recommendation that the RFP approved at this meeting so that staff can begin outreach to interested professionals.

Recommendation

Board discussion and approval

Introduction and Background

The Indian Wells Valley Groundwater Basin (Basin) is designated as basin number 6-54 in the Department of Water Resources Bulletin No. 118 and it is included on the list of critically overdrafted basins. The Basin overlies portions of Inyo, Kern, and San Bernardino Counties. Groundwater supplies in the Basin are used by a varied group including, among others, the Naval Air Weapons Station China Lake, the residents in and surrounding the City of Ridgecrest, the residents in and surrounding the unincorporated community of Trona, Searles Valley Minerals, and various agricultural users.

In response to the requirements of the Sustainable Groundwater Management Act (SGMA), the City of Ridgecrest, the Indian Wells Valley Water District, the County of Inyo, the County of Kern, and the County of San Bernardino collectively entered into a Joint Powers Agreement for the purpose of serving as the exclusive Groundwater Sustainability Agency for the Basin. The adopted Joint Powers Agreement created a separate public agency which has been named the Indian Wells Valley Groundwater Authority (Authority). The Authority is governed by a five member Board of Directors with each public agency appointing one Director to the Board. The Department of the Navy and the Federal Bureau of Land Management also appoint one representative each to the Board but those positions are non-voting. Stakeholder participation by water users will take place during noticed public meetings of the Board and its two advisory committees (one policy oriented and one technical oriented).

Pursuant to its by-laws, the Authority must select a "Water Resources Manager" to perform the required technical analysis and water administration functions required to adopt the SGMA mandated Groundwater Sustainability Plan (GSP). In exercising their powers and fulfilling their duties, the Water Resources Manager must rely on and use the best available science, records, and data to support the GSP and the implementation of the Act.

The Water Resources Manager

The Authority's Water Resources Manager will report directly to the Authority Board. Depending on activities in the groundwater basin, the Authority's

Water Resources Manager could be a part-time or full-time position. In either case, they shall be expected to:

1. Develop the GSP in consultation with for the Indian Wells Valley Groundwater Basin by 2020 as required by the SGMA.
2. Consult with the Board and the Advisory Committees during the development of the GSP.
3. In the event that the GSP or other actions of the Authority are challenged in court, and/or become part of a validation proceeding, present expert testimony in support of the GSP and such activities.
4. Interface with State Agencies in implementing the requirements of the SGMA.
5. Establish standards for measuring devices, or other equipment needed to implement the GSP.
6. Manage hydrological data collection as required by SGMA.
7. In the event that a plan is developed to import water, supervise and direct purchases of and recharge with water.
8. Develop standards for and monitor water quality as required by SGMA.
9. Create standards for and review production reports.
10. Create an annual report based on the requirements of SGMA.

Requirements

The Water Resources Manager must be diplomatic, transparent and impartial. The individual who leads this effort must be adept at working with diverse and potentially conflicting interests. The candidate must have very advanced knowledge of groundwater, hydrology and the applicable laws and regulations including groundwater rights and SGMA. The Water Resources

Manager will be expected to analyze technical issues, present viable alternatives, develop a consensus with the Advisory Committees, and provide sound guidance to the Authority. The Water Resources Manager must be both an excellent communicator and a highly skilled project manager with experience working within tight budgetary constraints.

The Water Resources Manager position may be assigned to a firm or team but in such a case a lead person shall be assigned the primary responsibility as the Water Resources Manager. The Water Resources Manager and/or team members must have significant experience and knowledgeable in watershed management, watershed modeling, water rights, state and Federal legislation and regulations concerning water rights and water quality, and SGMA. The Water Resources Manager and/or team members must hold the appropriate degrees and certifications in engineering, geology, or hydrology.

The Water Resources Manager should have significant experience in senior management positions and it desirable for the Water Resources Manager and/or their team to have prior experience serving as a Watermaster for an adjudicated basin.

Compensation

Individuals and firms interested in this opportunity will be asked to submit a brief work plan and a proposed three-year budget (Calendar Years 2017 - 2019). This information will be requested very soon after your application is received.

IWVGA ADMINISTRATIVE OFFICE

MEMORANDUM

TO: IWVGA Board Members **DATE:** February 16, 2017

FROM: Alan Christensen, IWVGA Staff *Ac*

SUBJECT: Discussion/Action on Frequency of Board Meetings

DISCUSSION

At the January 19, 2017, board meeting, IWVGA staff was tasked with exploring the option of having a second board meeting each month in an effort to expedite resolution/approval of ongoing items before the Board. While staff acknowledges a desire to expedite moving items forward, we do not believe that a second board meeting each month will assist in this goal. In addition, staff believes that the occasional "long" board meeting is preferable to a second monthly board meeting. That said, staff believes this request was, at least in part, due to the length of the January meeting which included three public presentations lasting in excess of two hours. Accordingly, future public presentations will be scheduled in a manner that allows adequate time for IWVGA business to be conducted within the two hour scheduled board meeting.

Staff's primary rationale for status quo is the amount of staff time staff needed to prepare for multiple board meetings. A substantial amount of staff time is presently devoted to preparing for one board meeting a month. For example, after each board meeting, staff discusses what happened at the board meeting to prioritize items for the next board meeting; the next agenda must be prepared and discussed; the board packet must be compiled and reviewed; as well as staff attendance at the board meeting¹. The time and resources needed to complete these tasks would be doubled with the addition of a second board meeting. Staff's time is limited and we feel the best use of our time is preparing items/documents for the Board's consideration as opposed to preparing for additional board meetings.

RECOMMENDATION

Staff is confident that as we move forward from setting the significant cornerstones for the GSA, the Board will see items moving forward in a more expeditious process. In addition, going forward staff will limit presentations to ten or fifteen minutes so there is time for action items.

Staff has reached agreement on the Bylaws that are presently before the Board and hope to receive Board authorization to commence the application process for PAC membership. The PAC and TAC Charters are presently being discussed by staff and we hope to have draft Charters for the Board's review at the March IWVGA board meeting. Staff expects that additional items will be handled in a timely manner as well. The Board can always revisit this issue at a later time if it feels additional board meetings are needed.

¹ It is important to note that out of town IWVGA Directors and staff spend additional hours traveling to and from board meetings.