

June 20, 2018

VIA ELECTRONIC MAIL

Indian Wells Valley Groundwater Authority
Board of Directors
c/o Clerk of the Board

Re: *IWVGA June 21, 2018 Board Meeting – Meadowbrook Dairy Comment Letter on
Agenda Items 10 and 11 Regarding PAC/TAC Procedures and TAC Report*

Dear IWVGA Board Members:

On behalf of our Firm's client, Meadowbrook Dairy ("Meadowbrook"), we submit this comment letter to the Indian Wells Valley Groundwater Authority ("IWVGA") regarding Item 10 ["Review of Protocol for TAC Meetings"] and Item 11 ["Report from Technical Advisory Committee (TAC)"] of the agenda for the June 21, 2018 IWVGA Board meeting.

Specifically:

- We object to the TAC Report Item 11 because it fails to accurately and adequately report to the Board regarding discussions, actions and outcomes of the May 31, 2018 TAC meeting. The TAC Report fails to report to the Board that the TAC **unanimously** approved the "Proposed PAC/TAC Procedures" that were attached to my letter dated May 30th, and directed that those Proposed PAC/TAC Procedures be presented to the Board. The TAC Report fails even to mention those Proposed PAC/TAC Procedures or my May 30th letter. Consequently, enclosed is a copy of my May 30th letter and the Proposed PAC/TAC Procedures, which we request be included in the record.
- As stated in the May 30th letter, the TAC and PAC have been forced to grapple with procedural and administrative issues for well over one year now that have hindered their ability to focus on their primary objectives. The Proposed PAC/TAC Procedures contain minor revisions to a version **drafted by IWVGA's General Counsel**, and are **intended to remove and resolve those procedural and administrative obstacles**.

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- The Staff Memorandum (“Staff Memo”) prepared for Item 10 regarding “Protocol for TAC Meetings” does not resolve or remove those obstacles. Instead, the Staff Memo advances an increasingly apparent objective to minimize the TAC and its role as a Standing Advisory Committee to the Board. The Staff Memo contains a strained analysis of the IWVGA Bylaws in order to erroneously conclude that the TAC does not keep minutes or vote on action items. These erroneous conclusions directly contradict the Bylaws, which clearly provide in Section 5.2. that **the voting on all matters of standing committees shall be reported on the minutes and accomplished in a manner that readily signifies the action taken and the vote or abstention on that action of each member present for the action.**
- The Staff Memo erroneously concludes that instead of **voting on matters of standing committees** and reporting that voting in the minutes as written in the Bylaws, the TAC instead should “act through ‘consensus.’” But by this logic, the PAC would not vote either, because Section 5.9 also states that “[t]he PAC shall *strive for consensus* in all of its decision-making, particularly when crafting PAC Proposals.” In fact, the same language is included in Section 5.13 regarding the TAC, which states “[i]n the course of evaluating each draft technical element of the GSP, the TAC shall *strive for consensus* in preparing written recommendations to the Water Resources Manager.” **Surely, it cannot be the policy of this IWVGA that its only standing technical advisory committee, the TAC, does not vote or keep minutes of its meetings.** We also question why IWVGA’s General Counsel has suddenly taken this unusual position, after months of TAC meetings (and after many sets of TAC minutes that were approved unanimously by motion).
- At the May 2018 TAC Meeting, the TAC directed its chair to request that the Board provide personnel or resources to prepare written TAC meeting minutes. The TAC has already unanimously carried a motion that all comment letters to the TAC and WRM, and other TAC meeting materials, are to be included with TAC meeting minutes.

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We therefore respectfully request that the Board:

1. Review and approve the Proposed PAC/TAC Meeting Procedures attached to my May 30th letter;
2. Confirm, with forceful clarity, that it is the policy of the IWVGA Board as stated in the Bylaws that both the PAC and the TAC may vote on action items and that written PAC/TAC meeting minutes shall be kept; and
3. Provide IWVGA resources and/or personnel to prepare written PAC and TAC meeting minutes in accordance with the Proposed PAC/TAC Procedures.

Thank you for your consideration.

Sincerely,



Derek R. Hoffman, Attorney for
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

DRH:mdd

Encl: May 30, 2018 Letter to IWVGA Board, with Proposed PAC/TAC Procedures

cc: S. Johnson, R. Strand, A. Christensen, D. Zdeba, J. Worth, K. Lemieux, P. Hall,
PAC Members, TAC Members, Client

Enclosure – May 30, 2018 Letter with Proposed
PAC/TAC Procedures

May 30, 2018

VIA ELECTRONIC MAIL

IWVGA Policy Advisory Committee and Technical Advisory Committee
c/o Clerk of the IWVGA Board and PAC/TAC Chairpersons

Re: *IWVGA PAC and TAC May 31, 2018 Meetings – Proposed PAC/TAC Procedures*

Dear PAC and TAC Members:

Both this Policy Advisory Committee (“PAC”) and Technical Advisory Committee (“TAC”) are standing committees of the Indian Wells Valley Groundwater Authority (“IWVGA”). The PAC and TAC were established over one year ago, and their respective memberships have been updated from time to time.

Since their formation, the PAC and perhaps more noticeably the TAC have, through no fault of their own, been forced to grapple with procedural and administrative issues that have hindered their ability to focus on their primary objectives. These committees (as well as the public) have often received extensive, substantive meeting agenda materials from the Water Resources Manager and IWVGA Staff less than 24 hours before PAC and TAC meetings, which deprives all interested parties of the ability to meaningfully participate in discussions of the agenda items at those meetings.

With many critical and substantive issues pertaining to sustainable management of the Indian Wells Valley Groundwater Basin to be addressed in the coming months, the PAC and TAC need to be able to adhere to clear and consistently followed generally accepted administrative policies and procedures.

On October 12, 2017, IWVGA General Counsel Phill Hall provided the PAC and TAC (as they were walking into their combined PAC/TAC meeting that day), through the Water Resources Manager, a document entitled, “Draft Indian Wells Valley Groundwater Authority PAC/TAC Meeting Procedures.” As stated by General Counsel Hall, the “Supporting Bylaws” for those draft procedures include the following recitations:

- “Purpose of Standing Committees (Article 5.1): The Board may establish **standing committees** for the purpose of making recommendations to the Board on the various activities of the Authority.”
- “Quorum (Article 5.2): A **quorum** of a committee shall be a majority of the appointed committee members **that hold a vote**. No meeting of a standing committee shall occur without the attendance of a quorum of its committee members.”
- “Rules of Order (Article 5.2): All rules of order, not otherwise provided for in the Bylaws, shall be determined in accordance with ‘Robert’s Rules of Order’”
- “**Minutes/Voting (Article 5.2): The voting on all matters of standing committees shall be reported on the minutes and accomplished in a manner that readily signifies the action taken and the vote or abstention on that action of each member present for the action.**”
- “Website Policy (Article 8.6): The Authority shall establish a public website where **all pertinent documentation**, not specifically protected by law, may be openly inspected by the public including **all agendas, minutes, resolutions, and ordinances of the Board and its standing committees; all public written briefings, presentations, and correspondence of the Board and its standing committees;** and all public financial and technical reports that are not protected by law.”

At the April 2018 TAC meeting, many TAC members were understandably surprised when they were told by the Water Resources Manager that they were *not allowed to vote to approve their own meeting minutes*. After being pressed for the reasoning behind that position, the Water Resources Manager indicated that he was relaying General Counsel Hall’s view that TAC Members “do not vote on anything” and instead “strive for consensus.” This position, however, is totally inconsistent with: (1) the Bylaws quoted by General Counsel Hall in the list above; (2) the fact that the PAC and TAC both have voting and non-voting members as evidenced in the several IWVGA Board Resolutions establishing and updating TAC and PAC membership that delineate between voting and non-voting members¹; and (3) the fact that the PAC and TAC can still strive to act by consensus pursuant to Bylaws Sections 5.9 and 5.13 on issues not requiring a vote.

¹ Notably, IWVGA Resolution 01-18 (which was drafted by General Counsel Hall and distributed to the public less than 24 hours before the March IWVGA Board Meeting and included as a “Consent Agenda” item for that meeting) does not resolve these issues. In fact, that resolution expressly states that it “does not in any way modify the Bylaws”.

Indian Wells Valley Groundwater Authority

Re: *IWVGA PAC and TAC May 31, 2018 Meetings – Proposed PAC/TAC Procedures*

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Enclosed for the consideration of the PAC and TAC Members, is a redline document showing proposed substantive changes to General Counsel Hall's October 12, 2017 draft Proposed PAC/TAC Procedures.²

We request your support for the suggested changes to General Counsel Hall's Proposed PAC/TAC Procedures and ask you to direct your PAC and TAC Chairpersons to request that the IWVGA Board approve the Proposed PAC/TAC Procedures at the next (or soonest possible) IWVGA Board meeting.

It is my sincere hope that these Proposed PAC/TAC Procedures with the suggested modifications will allow the PAC and TAC to accomplish their primary objectives, without further hindrance on administrative and procedural matters.

Sincerely,



Derek R. Hoffman, Attorney for
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

DRH:mdd

Enclosure: Proposed PAC/TAC Procedures (redline)

cc: Water Resources Manager
Client

² For simplicity, changes to formatting (e.g. spacing) are not shown in redline.

DRAFT

INDIAN WELLS VALLEY GROUNDWATER AUTHORITY

PAC/TAC MEETING PROCEDURES

General

1. All meetings are "Brown Act" meetings
2. Key Brown Act requirements include:
 - a. All meetings shall be open/public and allow for public comment
 - b. Reasonable regulations can be adopted (i.e. time limits for particular issues and/or individual speakers)
 - c. Regular Meeting Notices and Agendas released/posted to public at least 72 hours in advance of meeting. Supporting materials for Meeting Agenda items released/posted to public as soon as reasonably practicable prior to Meeting.
 - d. Quorum is required to take any Action (defined as collective decision/promise/commitment/vote made by a majority of the members)
 - e. Action may only be taken on Agenda items clearly identified for "Action" unless:
 - i. 2/3 vote that a need for Action came to the attention of the agency subsequent to the Agenda being posted
 - ii. Majority vote that an emergency situation exists
 - iii. The Action item was previously posted on an Agenda for a meeting not more than five (5) calendar days prior to the date of Action and the prior meeting item was continued to the meeting at which Action is taken
 - f. Meeting minutes must be prepared and released/posted to the public. Meeting minutes shall include all written correspondence directed to standing committees regarding matters on standing committee meeting Agendas.
 - g. ~~Meeting Notices for~~ Special Meeting Notices and Agendas released/posted to public at least 24 hours in advance of meeting. Supporting materials for Special Meeting Agenda items released/posted to public as soon as reasonably practicable prior to Meeting.
 - a. Notices for Special Meetings during an emergency situation released/posted one hour prior to the emergency meeting (or at the time that the legislative body is notified in the case of a verifiable dire emergency)

General Policies Consistent with both PAC/TAC Agendas

1. The PAC/TAC Chairperson and Vice Chairperson shall be responsible for preparing the "First Draft" of each Agenda, using appropriate IWVGA PAC/TAC letterhead, with "Draft" clearly shown.
2. The PAC/TAC Chairperson and Vice Chairperson may consult with the Water Resources Manager (WRM) before preparing the "First Draft".

3. The "First Draft" shall be prepared and forwarded to WRM not less than ~~ten fourteen~~ (14) calendar days before a regularly scheduled meeting.
4. The WRM shall review and revise Draft Agendas as appropriate, and forward the "Draft Final" Agenda(s) to the Authority staff (Board Chairperson and Vice Chairperson, General Manager, and appropriate legal counsels) and to the PAC/TAC Chairperson and Vice Chairperson for final review.
5. The WRM shall forward the "Draft Final" Agenda(s) to the PAC/TAC within ~~ten seven~~ (7) calendar days of a scheduled PAC/TAC meeting.
6. All comments to the PAC/TAC "Draft Final" Agenda(s) shall be provided to the PAC/TAC Chairperson and Vice Chairperson within ~~six five~~ (5) calendar days of a scheduled PAC/TAC meeting.
7. The PAC/TAC Chairperson shall release/post the Final Agenda(s) as soon as possible, and within the Brown Act requirements.

General Policies Consistent with both PAC/TAC Minutes

1. The PAC/TAC Draft Minutes shall be prepared by the PAC/TAC Chairperson (or appropriate appointee) within five (5) calendar days ~~following of~~ each PAC/TAC meeting and distributed for review and comment to the Authority staff (Board Chairperson and Vice Chairperson, General Manager and legal counsels) and to the WRM and PAC/TAC Vice Chairperson.
2. Any and all comments to Draft Minutes shall be provided to the PAC/TAC Chairperson and Vice Chairperson within three (3) calendar days of receipt.
3. ~~PAC/TAC Draft Minutes shall be The PAC/TAC Chairperson shall finalize the Minutes and released/posted Final Minutes~~ in the same manner as the Agendas and presented to the PAC/TAC for approval as an Action item at the following PAC/TAC Meeting. If changes to the PAC/TAC Draft Minutes are requested, the Draft Minutes shall be revised and presented for approval at the next PAC/TAC meeting in accordance with these procedures.
4. Once PAC/TAC Draft Minutes are approved, The the PAC/TAC Chairperson shall ~~endeavor to~~ release and post Final Minutes within ~~ten three~~ (3) calendar days ~~following a PAC/TAC meeting.~~

Supporting Bylaws

1. Purpose of Standing Committees (Article 5.1): The Board may establish standing committees for the purpose of making recommendations to the Board on the various activities of the Authority.
2. Regular Meetings (Article 5.2): The Board shall, in consultation with the committee members, establish a time and provide a place for regular meetings of any standing committee.
3. Special Meetings (Article 5.2) The Board Chairperson may call a special meeting of a standing committee as the need arises. The Standing Committee's chairperson, vice chairperson, or three members may make the request to the Board for calling a special meeting.
4. Quorum (Article 5.2): A quorum of a committee shall be a majority of the appointed committee members that hold a vote. No meeting of a standing committee shall occur without the attendance of a quorum of its committee members.
5. Rules of Order (Article 5.2): All rules of order, not otherwise provided for in the

- Bylaws, shall be determined in accordance with "Robert's Rules of Order"
6. PAC (Article 5.5): The PAC is the primary advisory body to the Board on all policy-related matters of the Board that are appropriate for the PAC input. The Board shall provide tasks to the PAC and the PAC shall report directly to the Board.
 7. TAC (Article 5.11): The TAC is established to assist the Water Resources Manager in the preparation of the GSP and will work collaboratively with other committees of the Board.
 8. Minutes/Voting (Article 5.2): The voting on all matters of standing committees shall be reported on the minutes and accomplished in a manner that readily signifies the action taken and the vote or abstention on that action of each member present for the action.
 9. Website Policy (Article 8.6): The Authority shall establish a public website where all pertinent documentation, not specifically protected by law, may be openly inspected by the public including all agendas, minutes, resolutions, and ordinances of the Board and its standing committees; all public written briefings, presentations, and correspondence of the Board and its standing committees; and all public financial and technical reports that are not protected by law.