

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.)

c) 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: Breeden, 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', written in a cursive style.

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.

Since 1940

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

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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