

SACRAMENTO CENTRAL GROUNDWATER AUTHORITY (SCGA)

Governing Board Meeting

Final Minutes

December 10, 2008

LOCATION: 10545 Armstrong Avenue, Suite 101
Mather, CA 95655
9:08 a.m. to 10:52 a.m.

MINUTES:

1. CALL TO ORDER AND ROLL CALL

Chair Scott Fort called the meeting to order at 9:08 a.m.

The following meeting participants were in attendance:

Board Members (Primary Rep.):

Anthony van Steyn, Agricultural Interests
Stuart Helfand, Agricultural-Residential
Rick Bettis, Conservation Landowners
Edwin Smith, Public Agencies Self-Supplied
Ron Lowry, Omochumne-Hartnell Water District
Andy Soulé, California-American Water Company
Ruben Robles, Sacramento Regional County Sanitation District
Scott Fort, Golden State Water Company

Board Members (Alternate Rep.):

Clarence Korhonen, City of Elk Grove
Walter Sadler, City of Folsom
Albert Stricker, City of Rancho Cordova
Dan Sherry, City of Sacramento
Herb Niederberger, County of Sacramento/Sacramento County Water Agency

Staff Members:

Darrell Eck, Executive Director, Sacramento Central Groundwater Authority
Sharon Andrews, Clerk, Sacramento Central Groundwater Authority
Ping Chen, Sacramento Central Groundwater Authority
Brian Gallucci, Sacramento Central Groundwater Authority

Others in Attendance:

Rodney Fricke, Aerojet
Steve Harriman, City of Rancho Cordova

2. PUBLIC COMMENT

None.

3. CONSENT CALENDAR

- **Minutes of October 8, 2008 Board meeting**

Mr. Stricker stated that his attendance at the last meeting was not recorded and that he would like his name added. After the vote Mr. Fort noted that the minutes were approved including the addition of Mr. Stricker's attendance as the alternate representative for the City of Rancho Cordova.

Motion/Second/Carried – Mr. Soulé moved, Mr. Smith seconded, and the motion carried unanimously to approve the minutes.

4. ELECTION OF OFFICERS

- **Election of Chair and Vice Chair of the Board of Directors**

Mr. Fort opened the floor for nominations for the Chair for the upcoming year and called for volunteers. The various Board members discussed terms and term limits before asking Mr. Fort if he would be willing to serve an additional term as Chair. He stated he would with the proviso that it would be his last year.

Motion/Second/Carried – Mr. Sadler moved, Mr. Robles seconded, and the voice vote was unanimous.

Mr. Fort then called for nominations for Vice Chair. Mr. Fort asked Mr. Sadler, immediate past Vice Chair, if he would be willing to serve another term, and Mr. Sadler responded that he would.

Motion/Second/Carried – Mr. Helfand moved, Mr. Lowry seconded, and the voice vote was unanimous.

5. WELL PROTECTION PROGRAM UPDATE

5.1. Counsel comments

Mr. Eck said staff sent all members a copy of counsel's opinion as to how Proposition 218 relates to the Well Protection Program (WPP). The opinion document discusses a number of different issues relating to the development of SCGA's WPP including:

- 1) the nature and application of a development impact fee,
- 2) the authority of SCGA to impose a development impact fee,
- 3) the necessity of an acceptable nexus study, and
- 4) the applicability of Proposition 218.

The first issue is whether or not SCGA's well protection fee qualifies as a development impact fee because the described project, well replacement, may not be considered a public improvement. Typically, a development impact fee is assessed as a condition of the issuance of a building permit (as proposed in the draft ordinance), an occupancy permit, or a subdivision map approval. A development fee is defined as a levy to fund public facilities and services necessary to serve new development in an amount that is proportionate to the need for the public facility that is created by the new development. When counsel was asked whether the well protection fee would qualify as a development fee, the response was that it was likely that their office would be able to reach that conclusion despite the nature of the well protection program.

The second issue is whether or not SCGA has the authority to impose a development impact fee, and if it doesn't, how can the fee be imposed. When the Authority started the process of developing the ordinance, counsel was asked if the JPA provided the necessary authority to establish a fee for a well protection program. At that time counsel's opinion was that the JPA provided the necessary authority. Based on this opinion the Authority proceeded with the development of the ordinance. Upon completion, counsel was asked to review the draft ordinance and to make recommendations on structure, content and implementability. During this review John Whisenhunt, who authored the JPA, opined that because SCGA does not have land use authority, it cannot impose a development impact fee as required by the ordinance. Mr. Whisenhunt went on to state that if a development fee is to be used to fund a well protection program, that fee would have to be imposed by the appropriate land use authority.

The third issue mentioned in counsel's opinion is the need for a nexus study. Prior to imposing a fee, a local agency must adopt findings identifying the purpose of the fee, identifying how the fee will be used, determining how a reasonable relationship exists between the fees use and the type of development project on which the fee is imposed, and determining how a reasonable relationship exists between the need for the public facility and the type of development project on which the fee is imposed. It has always been the intention of staff to develop a nexus study as part of the ordinance adoption process; it was just not within the timeframe laid out in the Work Plan for developing the draft ordinance that the nexus study would be done.

The final issue is the applicability of Proposition 218. As previously mentioned, counsel questioned whether or not the well protection fee would qualify as a development impact fee. With an acceptable nexus study, counsel has indicated that they can conclude that the well protection fee qualifies as a development impact fee provided that fee is imposed by the appropriate land use authority. Because SCGA does not have the authority to impose a development impact fee, adoption of the WPP ordinance and implementation of the well protection fee solely by SCGA would constitute a tax that would be subject to a vote under Proposition 218.

5.2. Identified Alternatives

At this point there appears to be three alternatives that the Authority can pursue:

- SCGA Alternative

This alternative is subject to Proposition 218 and is tax-based. Because it is tax based, this alternative will require an affirmative two thirds vote to pass. The cost to implement the vote and the potential for success going through this is unknown.

Mr. Niederberger clarified that in pursuing this alternative the Authority would be asking current residents to vote to tax any future residents; Mr. Eck agreed that would be the implication. Mr. Eck added that if SCGA were to pursue this alternative, staff would have to get more detail on who would be the eligible voters. Would it be everybody in the basin? Would it only be those properties that would be potentially impacted? There is still a lot that is unknown and would require clarification.

- Land Use Authority Alternative

This alternative closely follows the model established for the WPP in the draft ordinance already developed by the Authority. Additional tasks to complete include, but are not limited to:

- Nexus study -

The basis for identifying and documenting the extent of potential groundwater impacts and the probable cost for mitigating impacts are contained within several documents and in technical work performed by staff. Pertinent information from these sources needs to be combined into a single document which would constitute the nexus study.

- Working with the individual land use authorities –

Through this process staff would work with the representatives of the individual land use authorities to obtain concurrence from their counsels on the completeness of the nexus study and coordination on structure and content of the proposed ordinance for each jurisdiction. Provisions of the ordinance should be based on appropriate elements of the draft ordinance developed during the SCGA workshops. It is not anticipated that what the land use authorities would do would be substantially different than what has been discussed in the workshops. The ordinance needs adjusting, depending on the requirements of the individual jurisdictions. The approved ordinance will add a chapter to each jurisdiction's municipal or county code.

- Funding agreement –

SCGA would need to enter into a funding agreement with the land use authorities to pay costs associated with setting up the WPP in their

jurisdictions. When staff discussed this process with County infrastructure finance staff it was indicated that the Cosumnes Community Services District (CSD) had worked with the County on a similar issue. County staff provided copies of the documents establishing the CSD fee and staff was able to find similar documents for the City of Elk Grove. Based on a review of the County documents, the estimated cost to set up the program within the County was \$15,000. If each one of the signatories to the JPA took similar actions within their individual jurisdictions, the Authority would be looking at a cost of \$75,000.

- Environmental review

An environmental review will be required for each jurisdiction with some relatively minor associated cost.

- Public Outreach -

Public outreach would be required including outreach to the BIA and public hearings.

- No Program Alternative

Mr. Niederberger stated that the BIA has made a categorical decision that it will oppose any and all new or proposed increases in fees to the development process. He added that SCGA will not have the support of the BIA if it has to get BIA's concurrence and continued that the Sacramento County Board of Supervisors listens to the BIA. Mr. Niederberger added that he is uncertain whether the BIA has as much influence with other jurisdictional agencies.

5.3. General Discussion

There were some questions related to whether the City of Sacramento would be exempt from adopting the ordinance, Mr. Eck stated that the GMP acknowledges that the City of Sacramento is not a groundwater user in the Central Basin – and for that reason is exempt. However, during the WPP workshops Mel Johnson had indicated that there could be some areas in the eastern part of the City where the WPP could be applicable. Mr. Eck added that staff didn't expect a decision today and that he would like each of the Board members to go back to their organization, discuss the matter with appropriate staff, and make a determination on what approach to take.

In relation to Proposition 218, Mr. Niederberger said that County Counsel had indicated that the well protection fee was a development impact fee under Government Code 66000, but also said it was a tax - it cannot be both. Mr. Eck responded that it really came down to who is imposing the fee; if SCGA is imposing the fee it would fall under Proposition 218, if the land use authorities impose the fee it's a development impact fee.

Mr. Niederberger asked if it is a simple majority protest per Proposition 218 or is it an actual two thirds super majority type of vote. Mr. Niederberger went on to state that an independent water district (when implementing a water development fee that's collected when a building permit is issued) does not go through a Proposition 218 vote to implement their fee. They may go through a majority protest process, but they typically does not get it. Mr. Robles interjected that that is the same process SRCSD uses. Mr. Eck said that staff can get some additional clarification, but counsel said that Proposition 218 applies in this particular application of a fee through SCGA.

Mr. Sadler asked if Proposition 218 would apply if four of the five land use agencies decided to adopt an ordinance establishing a WPP. Mr. Eck responded that was pretty much what counsel said, the land use agencies adopt an ordinance establishing a WPP and SCGA works through them, in effect, the land use agencies act as an agent for SCGA. Basically, each land use agency adopts the ordinance which becomes part of their municipal/county code, projects are conditioned to pay the fee, is the fee is collected and then transferred into SCGA's trust fund for implementation of the WPP.

Mr. Eck indicated that he had asked counsel if SCGA could take an approach similar to the one described in the County's Board items for the CSD. Counsel indicated that the approach described in the CSD documents was an acceptable way to move forward with the WPP, should the land use agencies concur and wish to pursue it.

5.4. Budget

Current program expenditures are within the anticipated budget; expenditures to complete the WPP were estimated at about \$150,000 for this fiscal year. \$50,000 of that amount was supposed to provide seed money to implement the well protection impact plan, but given developments relative to WPP development it doesn't look like that will be happening this fiscal year. With approximately 50 percent of the year expended, about \$75,000 has been spent to date on the program, that would have been on target if everything had fallen into place. In summary, sufficient budget remains if the Board decides to pursue this course of action.

5.5. Other Potential Impacts

Increased focus on retooling the WPP could slow work on other components of the Groundwater Management Plan. Staff had originally anticipated wrapping things up on the WPP in January/February and that the focus would be on implementation. Depending on the amount of support the land use agencies would require to move this process forward staff may not be able to focus as much time on other activities such as: data collection to support the DMS, coordination activities with other agencies, and development of the State of the Basin report.

5.6. Requested Direction

Staff would like the Board's direction on the following questions:

- Are the land use agencies comfortable with developing the WPP within their own jurisdiction?
- Is participation by all signatories required for the success of the WPP?
- Does the Board feel comfortable delaying activities necessary to implement the GMP and reprogramming staff time for continued development of the WPP?

5.7. Board Discussion

Mr. Niederberger suggested the following strategy:

- Preparing the nexus study and get it out to the land use authorities for their review;
- Coordinate with the land use authorities to determine whether or not they are comfortable implementing such a fee; and
- Focus on the DMS program and the State of the Basin report while the nexus study is under review.

Mr. Soulé agreed, saying that the Board has become too preoccupied with the WPP. Work on the DMS and the State of the Basin report should be a primary focus for the Board because it benefits more than one stakeholder group.

Mr. Soulé then suggested that the Authority send a short letter to the participating agencies saying that counsel thinks that the WPP should be implemented through the land use authorities as previously discussed. Mr. Sadler countered by saying that a letter would invite additional delays. Mr. Sadler's preference would be to discuss the issue on an informal basis with the City Attorney and then report back at the next meeting and inform the Board on how the City would like to proceed. Mr. Sadler said he could even draft up a proposed ordinance for the City Attorney to look at. Mr. Fort said he thought that was a good idea.

Mr. Stricker said one of the things he would be interested in is feedback from BIA, with at least an indication of what direction BIA would go. Mr. Stricker felt that now is the time to start taking it to our city councils and boards about the proposal and see whether or not it would pass. Mr. Stricker indicated that he thought the path of least resistance for the program might be an approval process through the land use agencies.

Mr. Helfand protested that the Board is going backwards. He said when this whole thing was started the signatories agreed to this program. Now the Board wants to go with letters back to the same councils that originally approved moving forward with the GMP. Is this what we really want to do?

Mr. Korhonen disagreed with Mr. Helfand. For example, well replacement may not be considered a public improvement, how is the Board going to get past that hurdle? Mr.

Niederberger responded that the surface water improvements and importation of surface water by SCWA are public improvements. Tying in the WPP with this particular public improvement should be relatively straightforward. He added that he would work with staff in preparing a nexus study that makes this connection.

Mr. Niederberger also disagreed with Mr. Helfand's comment that the Board is going backward. He stated that when the stakeholders were putting together the GMP they agreed that the future governing body would continue to look at the imposition of a well protection fee. Basically, the stakeholders punted the whole issue to this body because they knew they would never ever get consensus in the groundwater forum.

Mr. Niederberger said he would have staff do whatever work is necessary to generate a nexus report that meets the requirements of Government Code 66000 so that the Board can forward it on to the jurisdictional agencies to aid in their determination of whether a fee is possible and appropriate. Mr. Robles asked if the timing is right for this. Mr. Niederberger responded probably not within the next six months, but hopefully there is some economic recovery after that, then it would be appropriate to move forward.

Mr. Fort asked whether the nexus study could be done and sent out to the JPA signatories, Mr. Eck responded that resources are available in the budget to do so. Staff can use those resources to develop the nexus study, package that information together with these examples of how the process might work (the CSD Board items), and then send it on to the representatives of the land use agencies.

Mr. Korhonen said that per the JPA a draft well protection ordinance is required to be submitted to the land use agencies in addition to the nexus study. Mr. Niederberger asked if the Board could generate a sample ordinance for adoption. It would obviously have to be formatted by each jurisdictional agency, but at least it could have all the "whereas" and "adoptions". Mr. Korhonen said the Board has a draft, but it would have to be modified. Mr. Niederberger agreed and said that the current draft ordinance was developed for SCGA to adopt, but it could be edited with appropriate language for the land use agencies to adopt. Mr. Eck agreed.

Mr. Soulé said that essentially there would be a need for two ordinances. One for the land use agencies so they can collect the funds, and the other to describe implementation of the WPP by SCGA. Mr. Fort asked Mr. Korhonen if submittal of the ordinance would be for approval. Mr. Korhonen answered that it would be "to consider for adoption."

Mr. Lowry said that it seems that the Board has split the ordinance. He said the ordinance for SCGA should cover spending and allocating the money, and the ordinance for JPA signatories would be how they collect the funds. Mr. Fort concurred. Mr. Eck said staff would look at the current draft ordinance and see how to properly split it. A number of the Board members agreed on the point.

5.8. Action:

The Board provided the following direction to staff:

- Complete the nexus study;
- Revise the draft WPP ordinance and providing a sample ordinance that can be sent to the land use agencies for their consideration; and
- Continue working on implementing the GMP including the DMS and State of the Basin report.

5.9.Revision to the Work Plan.

Mr. Eck said that modifications to the Work Plan would be made based on direction received from the Board today. Given what needs to be done it is difficult to provide a specific timeframe for completion at this time, but it is realistic to estimate that it will take a month or so to get the nexus study done. Mr. Eck said he would speak with counsel about any time constraints they may have and report back to the Board.

Mr. Soulé said it would help all the Board get a better feel for counsel's take on the ordinance if they could glance at it. Mr. Eck asked the Board if they would like to see the draft ordinance and the other documents first and then the nexus study will follow. Mr. Soulé said it would be helpful because it would give them something to look at and start thinking about. Mr. Eck agreed that it might ease everyone's concerns that the Board is not trying to create something new and unique.

6. BOARD CLERK

Discussion on replacing the Board Clerk.

Mr. Fort repeated his request for volunteers from the JPA signatories to provide someone to serve for a minimum of six months to a year as the Board Clerk. Mr. Fort reminded the Board that the operation of the Authority was intended to be a low budget affair. If we do not have volunteers who are already employed and have certain benefits, such as insurance, the Authority will have no other alternative then to contract with someone to provide this service (approximately 24 hours per month).

Mr. Robles said he would ask the former Clerk for a summary of her duties, and he would take the lead on reviewing proposals and come back to the Board with a recommendation.

7. EXECUTIVE DIRECTOR'S REPORT

Status of AB 303 grant application.

Mr. Eck said the contract with DWR and WRIME has been signed, and that work started in mid-November. The first status report is due to DWR at the end of January 2009. Work is supposed to wrap up in May 2010.

8. DIRECTORS' COMMENTS

Mr. van Steyn said it was a good meeting, and that the consensus of the Board to continue working on the DMS and the State of the Basin report while staff works on the nexus study and the draft ordinance is a good direction to go. It keeps the WPP in focus, and yet continues what we are supposed to be working on.

Mr. Niederberger said that in 2004 the Water Agency processed about 5,000 building permits. This year (2008) it looks like it will only be about 500 building permits, down about 90 percent. During this same period of time the Water Agency added over 1,000 customers, but that is out of the existing inventory of built homes. New housing starts and development fees are pretty much cut down to the bone. Mr. Sherry asked how foreclosures are impacting the Water Agency, and Mr. Niederberger responded that the Water Agency has the ability to lien property if it does not pay its water bill, so the Water Agency is paid under the foreclosure. It is an arduous process, and it is not like a typical utility where if a customer does not pay the bill it is written off. The Water Agency has one last shot at recovery.

Mr. Robles said at the high of the market, SRCSD was bringing in 12,000 connections a year. It is now down to 1,000, maybe 1,500 a year. Capital expenditures per annum was about \$80 million a year, and now it is one-tenth of that. The O&M budget was over \$100 million, and it has been cut way back. Severe financial cuts are being made in all aspects of the business, from cutting consultant contracts to freezing staff hires. SRCSD has \$400 million in cash on hand but will eat through that for debt service, so it is going to be a tough year.

Adjourned at 10:50 a.m.

By:

Scott D. Fort
Chairperson

2/11/09
Date

Sharon Andrews

February 17, 2009
Date

