

OPTIONS FOR GROUNDWATER SUSTAINABILITY AGENCY (GSA) GOVERNANCE STRUCTURES

SGMA Governance Background

A GSA must eventually have a defined governance approach and *must* prepare a GSP that meets State requirements. At their discretion, GSAs may...

- Adopt rules, regulations and ordinances
- Conduct groundwater studies/investigations
- Register and monitor wells (subject to certain exceptions for *de minimis* extractors)
- Require reports of groundwater extraction (subject to certain exceptions for *de minimis* extractors)
- Levy fees to implement capital projects to meet goals (subject to all applicable constitutional requirements depending on the nature of the fee) (may pursue other funding mechanisms if possess statutory authority)
- Levy fees to cover management/administrative costs (subject to all applicable constitutional requirements depending on the specific nature of the fee) (may pursue other funding mechanisms if possess statutory authority)

The following table provides brief descriptions of entity and/or agreement types available for GSA formation processes. It also provides several key pros and cons related to each type. This table was developed based on prior work developed by the Glenn SGMA Governance Work Group, and a governance work group over the Atascadero portion of the Paso Basin.

ENTITY USED OR AGREEMENT TYPE SELECTED TO FORM GSA	DESCRIPTION	PROS	CONS
<p>Single Existing Local Agency serving as a GSA</p>	<p>County, city, or other local public agency becomes a GSA and uses existing jurisdictional boundaries within the groundwater basin to take management actions</p>	<ul style="list-style-type: none"> ➢ Simple and quick as no agreement between parties is required for forming the GSA or defining roles. ➢ An existing administrative structure 	<ul style="list-style-type: none"> ➢ Would not allow for participation by other affected agencies ➢ May be opposed by other agencies ➢ Only an option for a single agency that covers the entire basin
<p>Memorandum of Agreement (MOA) establishing a GSA or coordination amongst GSAs</p> <p><i>Note: Although SGMA lists an MOA as a GSA formation option, the legislation suggests a GSA should be a separate entity, which is not generally created with an MOA.</i></p> <p><i>Under SGMA, an MOA is most likely to serve one of two functions: 1) Multiple local agencies could use an MOA as an initial agreement to memorialize their collective intent to form a JPA at a later date; 2) Multiple GSAs could use an MOA to coordinate GSA responsibilities and authorities, e.g., the development and implementation of a GSP</i></p>	<ul style="list-style-type: none"> • Agreement that one or more of the GSA eligible agencies will be the GSA or GSAs, but does not create a new legal entity • Governing body could be the legislative body of selected entity or new decision-making structure could be created • Would likely need to select one of the GSA eligible entities to act as the fiscal and contract agency for grants (because no new legal entity created) • Agreement could set out parameters for GSA operation • Individual entities will be liable unless selected entity(ies) agree to indemnify, i.e., no legal standing to sue or be sued 	<ul style="list-style-type: none"> ➢ Provides a flexible method to assemble agencies and stakeholders ➢ Private utilities, mutual water companies and other non-local agency parties could participate in an MOA 	<ul style="list-style-type: none"> ➢ May not create a contractual relationship between participants (dependent on the nature of the MOA itself) ➢ The underlying MOA/GSP goals/actions are reliant on the individual agencies to implement projects ➢ An MOA is not an adequate structure for project implementation without firm and binding agreements written into the MOA or side agreements and contracts for projects and is likely inadequate for pursuing Basin-wide (multi-jurisdictional) funding mechanisms ➢ MOA governance typically includes a single fiscal agent and contracting entity, and the same agency assumes liability for implementation of grant programs

ENTITY USED OR AGREEMENT TYPE SELECTED TO FORM GSA	DESCRIPTION	PROS	CONS
<p>Joint Powers Authority (JPA) establishing a GSA</p> <p><i>Note: Parties to a JPA can elect to create a separate public entity, or designate parties to carry out specific responsibilities; however, creation of a separate entity through a JPA is most common. Once a separate entity is created, it is a separate legal entity from its member agencies.</i></p>	<ul style="list-style-type: none"> • Formed by local agreement among government agencies pursuant to CA Gov't Code §6500 et seq. (mutual water companies may also join) (CA Gov't Code §6525) • May jointly exercise any power common to the contracting parties, and unique to SGMA, GSAs formed by a JPA are granted additional statutory powers not currently held in common by the members (some ambiguity about how membership by mutuals impacts available SGMA powers) • Creates legally binding commitments among entities • Used to define authorities, liabilities, responsibilities, funding, and revenue generation capacities • Can do business, hire staff, contract for service, enter into agreements • Can designate parties to carry out specific responsibilities, such as enforcement or management • Can include defined liabilities; i.e., can sue and be sued 	<ul style="list-style-type: none"> ➢ Integrates existing agency powers, authorities, and funding mechanisms ➢ Formed locally by participating agencies, is shaped to benefit local purposes, and includes an annual budget approved by a Board of Directors ➢ Member parties can retain control over JPA through the governing board and budget ➢ Can be structured so that members are not responsible for any debts or liabilities the JPA may incur ➢ Affords significant flexibility (e.g. Board of Director compositions) ➢ Easy to dissolve if not satisfactory ➢ May allow for associate member participation without conferring voting power ➢ Creates separate entity that can contract, receive grants, undertake funding processes, etc. 	<ul style="list-style-type: none"> ➢ Would be new government agency adding a layer of government with administrative costs (although any GSA likely to incur similar costs) ➢ Limited to powers held in common and SGMA powers ➢ No membership option for non-government organizations (except mutuals), BUT can be appointed to the Board (decision-making (voting) power) or could be appointed to advisory position ➢ Members are usually appointed rather than directly elected (although JPA could provide that e.g. Director representing County must be a Supervisor)
<p>Single new local agency is created and then becomes a GSA over the basin and makes decisions</p> <p><i>Note: California law provides for several forms of special agencies with responsibility for water management; e.g., California Water District (board elected by landowner voters to 4-yr terms); Water Replenishment District (board elected by resident voters to 4-yr terms); Agencies formed by Special Legislation (board structure and selection as set forth in the legislation)</i></p>	<ul style="list-style-type: none"> • Formed by state statute • Governance structure can be variable • Statutorily defined powers and authorities targeted to specific purposes or projects • Can do business, hire staff, contract for services, enter into agreements • Can include defined liabilities, i.e., can sue and be sued 	<ul style="list-style-type: none"> ➢ Can include non-governmental organizations in voting and in who sits on the board ➢ Very specific powers and authorities, decision process, funding and revenue generation, etc. ➢ Good for special purpose in a defined geography ➢ Can incur debt and sell bonds ➢ Empowered to facilitate state and federal coordination 	<ul style="list-style-type: none"> ➢ Takes longer to form than other options ➢ Would require special legislation and/or LAFCO proceeding ➢ Would require local collaboration and political support ➢ Would be new government agency, additional layer of government and administrative costs ➢ Difficult to dissolve

Concepts for Supplementing a GSA & Increasing Agency/ Basin User Participation:

Various GSA structures can be supplemented to allow various levels of participation and engagement. Several concepts being looked at elsewhere in the State include:

Special Committee or Commission Concept

GSAs can consider various means of engaging interested stakeholders and/or basin users as a means of representing water uses in the decision making process. These committees are typically established and led by an existing public agency (e.g., a County Water Commission) or in this case, by a GSA or GSAs. The intent would likely be to increase participation in decision making, provide a voice to basin users and entities not represented on the governing body, and generally to provide multiple levels for public participation in basin efforts and decision making processes.

These committees do not typically require a formal or binding agreement between participants, but rather rely on formation by the governing body to which their efforts relate. As such, committees tend to be easy to form (to address a single purpose) or dissolve (if committee falters or purpose is accomplished), and are therefore flexible. These committees are typically advisory in nature, with limited ability to make commitments. These committees can either be ad hoc or standing in nature (relates to whether they are formed with a specific charge and for a set period of time or ongoing). Typically, committees are volunteer in nature, and/or funded by the entity that creates the committee (i.e. the governing entity acts as a fiscal and contract agent for efforts conducted relative to the committee).

These committees provide various benefits: an opportunity to add expertise and leadership, that might not have otherwise been at the table; easy to form or dissolve; adequate means of helping with planning decisions; flexible structure; no legal standing to sue or be sued; and limited liability for participants. However, committees can pose some challenges: weak governance model with limited authority, active participation can be lacking due to voluntary nature, and the committee cannot hold property or sign contracts.

Local Implementing Agency (LIA) Concept

A governance concept called Local Implementing Agencies (LIA) has been developed specifically as the result of SGMA. Under this concept, the GSA serves as the overriding authority that conducts policy and oversight and ensures GSP compliance and basin sustainability. An LIA is a GSA-eligible local agency that may not have the resources to form an individual GSA or support the administration of a multi-agency GSA, yet still retains the implementation roles of SGMA and has nexus responsibilities with the overarching GSA.

LIAs could assume responsibility for implementing the requirements of the GSP that are attributed to them. Through an agreement with the GSA, such as an MOA, LIAs would be responsible for implementing their portion of GSP actions. An LIA will self-govern, and LIA leadership (presumed to be the existing leadership of the respective local agency) would have first line responsibility to ensure that fees are paid and GSP requirements are met. In a circumstance where a constituent in an LIA does not comply with GSP requirements and is not responsive to LIA leadership directions, the condition is elevated to the overarching GSA to be addressed.