

Staff Report

TO: Board of Directors
FROM: Mark Dias, AGM
RE: **Update #4-** Sustainable Groundwater Management Act (SGMA) Planning
DATE: December 21, 2016

Note: Supplemental material (PowerPoint presentation) to be provided at the Dec 21 Board meeting.

SUMMARY

At the November AWD Board meeting, staff presented seven draft options for GSA formation. In December staff continued to make progress assessing these options. Additional information was gathered from State agencies and productive meetings were held with managers for PVWMA and the water agencies for both Monterey and San Benito counties. As a result, November's list of options can be reduced from seven to three. Pros and cons for each option were developed. Despite this progress our local setting remains complex and all three scenarios are impacted by grey areas of the law or hinge on future decisions by State agencies. Therefore staff's analysis is based on the best information available at this time.

New information includes: (1) District staff and all the other three water agencies agree that PVWMA's pending submittal of their Alternative plan appears to be pivotal and could eliminate the need for AWD and the Counties to form any type of GSA. Therefore support of PVWMA's alternative effort (Option A) is recommended. If PVWMA's Alternative plan is denied by the State, the District would still have 180 days to form a GSA even if this is past the June 30, 2017 deadline. (2) The option to form a GSA to manage lands within our Sphere of Influence (Sphere) is complicated by questions surrounding whether agencies have adequate legal authorities needed to manage water use and collect fees in their Spheres. So this option is not recommended at this time. This eliminates one of the seven draft options. (3) It appears unlikely that either of the County water districts are prepared to immediately form GSAs to cover either the "islands" or our Sphere. Instead it more likely they may await the results of State decisions regarding PVWMA's Alternative plan and wait for State enforcement policies to evolve for fringe areas such as ours. This effectively freezes two of the seven options. (4) District staff and all the other three water agencies agree that formation of a Joint Powers Authority (JPA) is legally unnecessary and overly burdensome. This eliminates the JPA option.

ANALYSIS OF SEVEN OPTIONS

The November staff report presented seven draft options (Options A through E). The section below analyzes each Option in order.

OPTION A: PVWMA's Alternative Plan

In December significant new information was received about how Alternative Plans are processed and how it can greatly streamline the sustainability issue for all the local water agencies.

- **Description.** AWD would take no action while PVWMA submits their alternative plan. AWD waits for up to two years for the State to either approve or deny the alternative plan. If approved then no further action would be needed by AWD. If denied we would (re)consider our viable options at that time.
- **Background.** SGMA law allows for a process where if any agency (i.e., PVWMA) believes an "alternative plan" satisfies the same objectives as a Groundwater Sustainability Plan

(GSP), that agency can submit their plan to the State for approval. PVWMA's Board authorized staff to submit their most recent Basin Management Plan as an alternative plan. *It is important to note that PVWMA's plan (backed up by sophisticated groundwater modeling) covers the **entire basin** including the PUMA area.*

- **Analysis**

- **Possible State approval of Alternative plan.** If accepted by the State, the need for AWD to form a GSA would be moot. The need for Monterey and San Benito counties to form GSAs to cover our Sphere or the Islands also appears to be moot. Therefore all three water agencies will be following this process closely. The timeline to receive an answer from the State (approval/denial) is not known.
 - **Possible State denial of Alternative plan.** If denied by the State the need for AWD to form a GSA will be renewed. Fortunately SGMA allows for a 180-day window after a denial to form a GSA before State intervention would be triggered (even if after the June 30, 2017 deadline).
 - **Timeline.** Jan 1, 2017 is the deadline for PVWMA to submit their Alternative plan. The State's review time could range from 6 months to 2 years. During this time we would await State DWR approval/denial. The June 30, 2017 deadline for GSA formation deadline will not apply during this State review period.
 - **Pros/Cons.** There would be several significant benefits notably that AWD and the Counties would not need to form GSAs or be involved in groundwater management. Our existing augmentation fees would continue. During the waiting period we could track the evolution of state enforcement policies and priorities. There does not appear to be any cons at this time. If the alternative plan is denied, there will not be any penalties and AWD would have 6 months to complete the GSA formation process (a realistic timeframe).
- **Support of PVWMA's efforts.** Because of these significant benefits staff is recommending supporting PVWMA's alternative plan. Initially this could be a letter of support included in the application package. There will also be a public comment period and AWD could offer additional support at that time.

OPTION B: "Do Nothing"

- **Description.** In this alternative AWD would: (1) take no action and not form a GSA; (2) continue to report pumping to PVWMA and pay augmentation fees; (3) react to State/County intervention (enforcement) actions.
- **Analysis.** Because PVWMA will be submitting their Alternative plan regardless of AWD's actions, this "Do Nothing" option is essentially frozen for six months up to two years. If PVWMA's alternative plan is denied, this option may be reconsidered at that time.

OPTIONS C1 and C2

- **Description.** Under Option C1, AWD would form a GSA to only cover our annexed area. Under Option C2 we would form a GSA to cover both our annexed area and the Sphere of Influence. This would be a stand-alone effort (i.e., the islands and our Sphere would be unaddressed and left to State intervention).
- **Background.** Unless covered by an alternative plan (Option A), the "critically overdrafted" Pajaro groundwater basin must be covered by a GSA by June 30, 2017 or the basin may be placed in a "probationary" status. This would be expected to trigger intervention by the State Water Resources Control Board (SWRCB) including state fees. PVWMA is already the exclusive GSA for the portions of their groundwater basin within their boundaries. Because their boundaries do not include the *entire* groundwater basin it leaves a Potentially Unmanaged Area (PUMA - See Exhibit A). The PUMA is ~9% of the Pajaro basin. Having a PUMA within the critically over-drafted Pajaro basin may cause the State Board to place the entire Pajaro basin into a "probationary" status and trigger State intervention. This is a

key reason why AWD is encouraged to form a GSA. Our area, including our Sphere of Influence, covers 75% of the PUMA.

- **Analysis.** PVWMA will be submitting their Alternative plan (See Option A) regardless of AWD's actions. Therefore the formation of a GSA will ideally be preempted by the approval of the alternative plan. This may take from six months up to two years. If PVWMA's alternative plan is denied, the C1 Option would be reconsidered at that time.

Regarding Option C2, forming a GSA to manage lands within our Sphere is complicated by questions surrounding whether agencies have the needed legal authority to manage water use and collect fees in their Spheres. So Option C2 is not recommended.

OPTIONS D1 and D2

- **Description.** Under Option D1 AWD would form a GSA to cover just our annexed area. Both Counties would form GSAs to cover the Islands and our Sphere of Influence. Under Option D2 we would form a GSA to cover both our annexed area and the Sphere of Influence. Both Counties would form GSAs to cover the Islands. County involvement would have the benefit of covering the entire PUMA leaving no "white spaces."
- **Analysis.** PVWMA will be submitting their Alternative plan (See Option A) regardless of AWD's actions. Therefore the formation of GSAs will ideally be preempted by the approval of the alternative plan. This may take from six months up to two years. If PVWMA's alternative plan is denied, the D1 Option would be reconsidered at that time.

Regarding Option D2, forming a GSA to manage lands within our Sphere is complicated by questions surrounding whether agencies have the needed legal authority to manage water use and collect fees in their Spheres. So Option D2 is not recommended.

OPTION E- Formation of Joint Powers Authority (JPA)

- **Description.** Four water agencies (AWD, PVWMA, Monterey County and San Benito County) form a new legal entity to regulate water as a GSA. The entire basin and PUMA would be covered.
- **Analysis.** The staff of all four water agencies concur that that the formation a Joint Powers Authority (JPA) is (1) legally unnecessary (there are other less expensive and more direct options); (2) is overly burdensome to establish a new legal entity with a new board and staff. Therefore Option E is not recommended for further consideration.

Ongoing Cooperation with PVWMA. On December 14 District staff held a productive meeting with PVWMA staff and counsel and representatives of San Benito County Water District and Monterey County Water Resources Agency. All agencies were aligned in regards to supporting PVWMA's Alternative plan. AWD and PVWMA will continue to jointly analyze the options and answers to challenges as they arise. PVWMA previously provided the District with very useful mapping/parcel data for the PUMA area. Staff continues to analyze which parcels might need to be regulated if a GSA was formed in the future.

Time Tracking. Per the Board's request, staff has tracked the time spent on SGMA efforts. Since Sept 1st, AGM Dias has spent 99 hrs. This does not include significant time by the GM.

UPCOMING STEPS

- Consider ways to support PVWMA's alternative plan submittal and await State review of same.