

# MEETING SUMMARY

## Pauma Valley Groundwater Basin

### Community Meeting

May 2<sup>nd</sup>, 2017 | Pauma Valley, CA

*Prepared by the Center for Collaborative Policy, California State University, Sacramento*

#### Table of Contents

A. Background .....	1
B. Opening and Meeting Objectives .....	2
C. Review of Key Elements of the MOU and Local Governance Structure .....	2
D. Open Discussion and Comment Period .....	5
E. Closing Remarks .....	8
F. GSA Work Group Attendance .....	8

#### A. Background

In September 2014, Governor Brown signed the Sustainable Groundwater Management Act (SGMA), marking a fundamental shift in the management of water resources in California. Under the legislation local agencies are charged with the responsibility to form groundwater sustainability agencies (GSA) to create and implement groundwater sustainability plans (GSP) leading to sustainable groundwater basins. The ultimate goal is to create a GSA(s) and GSP(s) that is responsive to the interests of beneficial uses and groundwater users while simultaneously protecting the long-term reliability of the resource.

To assist with this effort in the San Luis Rey Groundwater Basin and assess stakeholder interests, concerns and goals for GSA formation, the Department of Water Resources (DWR) provided professional facilitators from the California State University Sacramento's Center for Collaborative Policy (Center) to conduct a series of community meetings and stakeholder interviews. DWR provided additional support through the Center to assist local agencies in the upper portion of the San Luis Rey Groundwater Basin to establish a GSA for that area.

The feedback received by stakeholders and at community meetings will help all parties understand the range of perspectives, areas of agreement and disagreement, and issues that must be resolved in the GSA formation process and subsequent GSP development. Success will ultimately depend on the commitment and participation of a large number of people and organizations throughout the development and implementation process.

## B. Opening and Meeting Objectives

Meagan Wylie and Stephanie Lucero, facilitators from the Center opened the meeting, welcomed the community, and reviewed the agenda. The purpose of this meeting was to provide the Pauma Valley (PV) community an update on efforts to form a GSA for the upper portion of the San Luis Rey basin. Meeting goals were as follows:

1. Update the community on progress being made by the PV GSA Work Group.
2. Review key elements of the GSA proposal.
3. Provide opportunity for questions and open discussion.
4. Clarify next steps.

Workshop information, including the PowerPoint presentations can be accessed via the San Diego County Website at: <http://www.sandiegocounty.gov/content/sdc/pds/SGMA/san-luis-rey-valley.html>

## C. Review of Key Elements of the MOU and Local Governance Structure

At the request of the GSA work group members, Ms. Wylie reviewed the key elements of the current GSA Memorandum of Understanding (MOU). The key components of the draft MOU shared at the January 25, 2017 Community meeting remain the same; the organization has evolved as follows:

- GSA eligible agencies establish a single multi-agency GSA, called the “Pauma Valley GSA,” via a MOU
- “Executive Team” to collaborate with the County
- County as lead to develop one collective GSP (only) for the entire San Luis Rey groundwater basin
- County proposed covering costs of GSP preparation (only)
- Each stakeholder on the Executive Team will regularly engage its Board and constituents
- Community-wide public and Tribal engagement will continue throughout GSP development

Next, Jim Bennet, County of San Diego, presented three slides to review the groundwater and subterranean stream flow issues as related to the lower portion of the San Luis Rey groundwater basin, west of Frey Creek. Mr. Bennett read directly from a statement prepared by the County when reviewing each slide. To summarize:

- Water downstream of Frey Creek is subject to State Water Resources Control Board (State Board) management authority as subterranean stream flows. This is because SGMA excludes water flowing in known and definite channels. Therefore, the County has determined it has no legal authority for management in this area.

- The Pauma Valley GSA will develop a GSP that covers the entire San Luis Rey groundwater basin. In this regard, the County has received general guidance from DWR that the GSP must include an administrative review of the lower basin, and an evaluation of impacts to water quality and quantity from the upper to the lower portion of the basin, but the GSP will not include any project or management actions for the lower portion of the San Luis Rey groundwater basin downstream of Frey Creek.
- While the County currently has no management authority as a GSA in the lower portion of the basin, the County envisions two potential options for local management of the lower portion of the basin if the State is inclined to (a) change the definition of groundwater in SGMA to include water that flows through known and definite channels, or (b) re-designate the lower portion of the basin as “percolating groundwater.”

Multiple GSA work group members then shared highlights of their experience and perspective engaging in this GSA development process:

- **Warren Lyall, Pauma MWD**, provided a personal history of his family’s residence in the Pauma Valley. His grandfather dug his first well in 1935 reaching the water table at 60 feet. Mr. Lyall began monitoring water levels in the mid-1980s, at which time the water table was around 100 feet. In the late 1990s, the water level dropped over 100 feet to a depth of 200+ feet below the surface. Then with the drought, groundwater levels became very tenuous. This put great stress on the basin and the people who depend on groundwater for their livelihoods. With the pending onset of SGMA in 2014, the local population realized that serious action must be taken in order to preserve and sustain the groundwater resources. While SGMA implementation may feel burdensome, it is an opportunity and catalyst for action. Local agencies began meeting together in 2014 to discuss the issue, and at that time there was great apprehension and distrust among parties. In addition, local agencies did not have a realistic understanding of the high costs associated with GSP development. Over the last two years, with more than 20 meetings together, foundational relationships have been built and trust levels significantly increased, including with the County. Mr. Lyall expressed his appreciation for the County’s demonstrable intention to serve and support the Pauma Valley community, rather than dominate the community. The current MOU for GSA formation is a cooperative agreement that all local agencies are comfortable with. All parties recognize there is significant work ahead of the group, but this is a critical milestone in the process towards achieving groundwater sustainability.
- **Dick Nolan, Pauma Valley Community Service District**, agreed with Mr. Lyall’s sentiments, noting that the development of the GSP will be a challenging effort but the parties are working closely together and have developed a high degree of trust. All involved recognize there are many different interests that need to be acknowledged, respected, and accounted for in all future discussions/decisions. Mr. Nolan also thanked the County for their supportive actions and the facilitation team for helping to keep the Work Group focused and moving forward.

- **Jesse Hutchings, Upper San Luis Rey Resource Conservation District**, further echoed the statements shared by his fellow Work Group members.

#### Question/Discussion:

*Questions/comments by community members are indicated by closed bullet points. Responses are indicated by open bullet points.*

- On average, how long will it take to see impacts of this winter's heavy rainfall on the groundwater levels?
  - **Mr. Lyall:** Monitoring will begin to recognize groundwater level impacts in approximately 9-12 months after a rainy season. It was also beneficial to the water table that pumping/irrigation was kept to a minimum for four to five months due to this particularly rainy winter and spring.
- In the current MOU to form a single multi-agency GSA, does the County still maintain ultimate decision-making authority with respect to developing components of the GSP?
  - **Leanne Crow, County of San Diego:** Yes, the County still maintains this authority. However, the goal of the GSA is to incorporate what is recommended by the Executive Team into the GSP. If the County cannot support a recommendation, they must provide justification as to why there are choosing to act in disagreement; for example, there may be extenuating financial costs or exposure to liability that must be considered.
- Are the other MOU parties and members of the Executive Team comfortable with this arrangement?
  - **Mr. Lyall and Mr. Nelson:** Yes, members are comfortable with this arrangement.
- Why are some agencies who were previously intending to be party to the MOU no longer going to sign?
  - **Gary Arant, Valley Center MWD:** Valley Center has only 480 acres of 46,000 acres within the groundwater basin boundary. As the agency reviewed the MOU, it was determined that the degree of exposure to potential litigation was not worth risking for Valley Center's very limited presence in the basin. While the decision has not been officially made by the Board of Directors, they expect to relinquish their current GSA filing before the end of June. However, Valley Center looks forward to continuing their involvement as an active member of the Executive Committee and/or a community stakeholder.
- Has there been any discussion/agreement on how a Tribal Advisory Committee would be structured?
  - **Mr. Arant:** Throughout the duration of the GSA Work Group's efforts, there has been an open door to Tribal participation. What has been shared with the Group to date is that the Tribes are following the process, and are determining how/if they will participate. The Work Group would like to hear from the Tribes how

they would like a Tribal Advisory Committee structured; what method of operations and communications would work for the Tribes interested in participating. The Work Group remain interested in developing this advisory committee with the Tribes.

- **George Wilkins, Council for La Jolla Band of Luiseño Indians:** The La Jolla Band is interested in the process and would like to be engaged. The Tribe is reviewing options for engagement currently, and is interested in the idea of forming a Tribal Advisory Committee.
- There are still new wells being drilled throughout the Valley. When will the County begin to review and approve wells before they are drilled?
  - **Mr. Bennett:** These issues cannot legally be addressed until the GSA is officially established. At that point, it will be the entire Executive Team that engages in these discussions and decision. For the last 100+ years, State Water Law has allowed a person to simply obtain a permit and drill a well; the process was simply administrative. This is the first time in over a century that review, approval, and denial authorities are afforded to local agencies via SGMA.

## D. Open Discussion and Comment Period

*Questions/comments by community members are indicated by closed bullet points. Responses are indicated by open bullet points.*

- **Bob Pelcyger, Legal Counsel for San Luis Rey Indian Water Authority (SLRIWA):** Mr. Pelcyger provided a history of water rights in the basin and an update on litigation that was initiated in 1969 concerning diversion of water from the San Luis Rey River conducted by agencies in Vista and Escondido. This litigation reached settlement in 1988, but the Federal court only very recently approved it. The San Luis Rey Indian Bands involved in the settlement, and the SLRIWA (collectively the Tribes), will now have the capability to retain within the San Luis Rey watershed most of the water that has been historically diverted from Vista and Escondido. This will dramatically change the landscape of the watershed. This water is of significantly better quality than water that is imported through the State Water Project. Salt deposits from imported water have always been of paramount concern to the Tribes.

Mr. Pelcyger also reminded the community and the GSA Work Group of the Tribes' dissatisfaction regarding the former proposal for a basin modification. The Tribes strongly objected to the bifurcation of the basin, as they view the basin as a complete watershed and have interests in both the upper and lower portions. The Pala Reservation comprises over 50% of the land area within the basin. The SLRIWA feels that this group's actions to form a GSA only for the Pauma Valley portion of the basin is incidentally a way to maintain basin bifurcation, and is unacceptable. This is a critical issue for the Tribes related to GSP development and management authority for the entire basin. They do not feel that the two options described by the County for redesignating the subterranean stream flow, or asking SGMA to allow for an exception

in this basin, are appropriate courses of action to remedy the issue. The Tribes maintain that Federally Reserved Indian Water Rights must be fully respected, and in the event of any conflict (such as this situation of disagreement), Federal law presides over State law. Mr. Pelcyger also expressed the opinion that this preference for federal law is dictated in SGMA.

- **Mr. Arant:** The GSA Work Group has never been actively or intentionally adversarial to the interests of the Tribes. The Group has worked to move forward to meet the DWR June 30<sup>th</sup> deadline in the areas of the basin under which these local agencies (minus the County) have authority. The Work Group has also been trying to pursue resolution of this issue with DWR and State Board for several months now within their collectively and individual capacities.
  - Work Group members agreed there is a special provision that applies to federally reserved water rights for the Pala basin, while simultaneously recognizing that their local agencies are subject to State law.
- **Mr. Nolan:** Does the SLRIWA have an action pending to the State or State Board to address the bifurcation/Subterranean Stream issue?
  - **Mr. Pelcyger:** Several tribal legal counsel representatives have met with State Board staff, made their position on the issue clear, and have requested action/resolution. Tribes are aware the County has done similar and response from the State Board is still pending.
- **Mr. Nolan:** Recognizing the frustration of the Tribes, is there more that this Work Group in particular could do to support resolution of these issues?
- **Mr. Arant:** This group has asked many times for participation from the Tribes, and the door will remain open.
  - **Mr. Pelcyger:** There should be more frequent communication and greater coordination between the Tribes and the Pauma Valley GSA. This has been recently discussed with the County. Furthermore, while the local agencies do not have authority to file as a GSA over the lower basin areas, the County does have this capability. Tribes cannot legally be a GSA.
  - A future question to consider is how to address Tribally owned fee land that later gets converted into Trust Land under SGMA, and these otherwise unmanaged areas. Likewise, to consider the role the counties can play to ensure that tribal lands (including tribal trust and fee lands) are considered in SGMA implementation.
  - There are examples in other California Basins wherein Tribes and GSAs and/or counties have entered into MOU to address management of groundwater. This could be something to review and discuss once the bifurcation/ subterranean stream issues are resolved.
- **Tim Ross, DWR:** The County, and the Work Group via the Center, have been in constant communication with DWR related to management of this basin. This Work Group has always indicated their preference of working closely with the Tribes for GSP development. The County did not file to be a GSA for the lower portion of the basin

because of the reasons expressed in their statements. Nor did they want propose GSA status over tribal lands and therefore act as is they were overriding tribal sovereign authority. There is ambiguity from the State on how SGMA can apply on tribal trust lands and what it means to be either Federal or tribal trust lands. Likewise, there is uncertainty regarding how to appropriately “cove” these areas for management. The State is working on developing a statement of resolution for this issue.

- **Ms. Crow:** Would Tribes be interested in entering into an MOU for the unmanaged territories with County?
  - This idea will require discussion between Mr. Pelcyger and Ed Roybal, Legal Counsel for the Pala Band of Mission Indians.
- **Mr. Wilkins:** Each Tribe is approaching their involvement in SGMA differently. The La Jolla Band is interested in achieving mutually beneficial outcomes, and they are not interested in developing agreements that would provide the County any type of management authority over tribal lands. Another possible avenue to address the concerns expressed by Pala and SLRIWA is via the forthcoming Bulletin 118 basin boundary update process tentatively scheduled to occur in 2018. A geotechnical examination reveals there to be an ancient landslide that occurred at this basin transition area (near Bonsall and Mission areas). Assessment of this research may encourage State Board and DWR to revise their identification of where the subterranean stream begins and ends.
- **Ed Roybal, Legal Counsel for the Pala Band of Mission Indians:** Mr. Roybal echoed the majority of sentiments expressed by Mr. Pelcyger on behalf of the Pala Band. He reiterated the Pala Band’s frustration in regard to the basin bifurcation issue, and the concerns about in the potential negative impacts to water quality downstream due to groundwater management measures implemented upstream. Pala is also interested in working with all parties to find solutions, and in the protection/respect of federally reserved water rights.
  - **Mr. Bennett:** The Pauma Valley GSA can work collaboratively to provide a GSP and tools for management for the lower portion of the basin, and work to build a GSP that ensures Federal water rights are preserved. The Pauma Valley GSA has the ability to work with Tribes on this effort. However, the GSA has no management authority over the lower portion of the basin. The County is interested in continuing this dialog to find a way forward to address tribal concerns relating to management of the lower portion of the San Luis Rey basin. Recently, the County and Mr. Pelcyger have committed to a meeting between interested tribal legal counsel and County counsel to discuss next steps, develop a mutual understanding of all Parties’ interests, and advance the effort.

### Next Steps

After discussion among attending Tribal legal counsel and GSA Work Group members, the following next steps were agreed to:

1. County legal counsel to meet with SLRIWA, Pala and Pauma tribal legal counsel to discuss the handling of the lower basin the subterranean stream issue, and what the Tribes are considering a continuation of the denied basin modification request.
2. Once the bifurcation issue is resolved, some (or all) interested Tribes may explore the option of entering into an MOU or legal agreement with the local public agencies to address the management of the lower basin. Some Tribes may also like to explore entering into an MOU with the Pauma Valley GSA for coordination of the tribal areas in the upper portion of the basin.
3. Tribes will explore the establishment of a Tribal Advisory Committee and/or seats on the Executive Team for sustainable groundwater management in the San Luis Rey groundwater basin.

SLRIWA, Pala and Pauma tribal legal counsel requested that Steps 1 and 2 occur before additional discussions regarding a Tribal Advisory Committee. Some tribal representatives proposed that a Tribal Advisory Committee could help facilitate discussions in Steps 1 and 2, but will confer with the other San Luis Rey Tribes to discuss sequence of discussions further and continue their support of the Pala and Pauma Tribe's relative to their concerns with splitting management of the basin based on percolating groundwater and subterranean streams.

### E. Closing Remarks

The Pauma Valley GSA MOU will be publically available when the first agency goes through their Board adoption process. At that time, Center will inform the Tribes the MOU is available for review.

Work group members thanked the community participants for their involvement in the SGMA process, and for joining the meeting. The next community meeting will likely be held in several months' time.

### F. GSA Work Group Attendance

- Dick Nolan, Pauma Valley Community Services District
- Gary Arant, Valley Center Municipal Water District (alternate)
- Jeanie Schell, Mootamai Municipal Water District (alternate)
- Jesse Hutchings, Upper San Luis Rey Resource Conservation District
- Jim Bennet, County of San Diego
- Leanne Crow, County of San Diego (alternate)
- Oggie Watson, Upper San Luis Rey Resource Conservation District (alternate)



- Rick Kariya, Pauma Municipal Water District (alternate)
- Roland Simpson, Yuima Municipal Water District (alternate)
- Warren Lyall, Pauma Municipal Water District
- Stephanie Lucero, Center for Collaborative Policy, Facilitator
- Meagan Wylie, Center for Collaborative Policy, Facilitator