

MEETING MINUTES

Groundwater Sustainability Agency for the Western Management Area in the Santa Ynez River Groundwater Basin August 09, 2023

A special meeting of the Groundwater Sustainability Agency (GSA) for the Western Management Area (WMA) in the Santa Ynez River Groundwater Basin was held on Wednesday, August 09, 2023, at 10:00 a.m. at the Vandenberg Village Community Services District Board Room, 3745 Constellation Road, Lompoc, California.

WMA GSA Committee Members Present: Chris Brooks, Myron Heavin, Steve Jordan,

WMA GSA Acting Alternate Committee Members Present: Kristin Worthley

WMA GSA Alternate Committee Members Present (in person): Cynthia Allen and Ron Stassi

WMA GSA Alternate Committee Members Present (remote): Meighan Diethofer

Staff Present: Joe Barget, Bill Buelow, Amber Thompson, and Matt Young (remote)

Others Present (in person): Carol Redhead

Others Present (Video Conference): Matt Brady, John Fio (EKI), Paeter Garcia,
Curtis Lawler (Stetson Engineers), Miles McCammon (Stetson Engineers),
and Steve Torigiani (Young Wooldridge, LLP)

1. Call to Order and Roll Call

WMA GSA Committee Chair Chris Brooks called the meeting to order at 10:05 a.m. and asked Mr. Bill Buelow to call roll. Three Committee Member and one Acting Alternate Committee Members were present providing a quorum.

Mr. Buelow reported that Director Art Hibbits, previous WMA GSA Committee Alternate, recently retired from the Board of Directors of the Santa Ynez River Water Conservation District (SYRWCD). The SYRWCD Board appointed Cynthia Allen as Alternate Committee Member and Steve Jordan continuing as Committee Member representing the SYRWCD Board to the WMA GSA Committee

2. Additions or Deletions to the Agenda

No additions or deletions were made.

3. Public Comment

There was no public comment.

4. Review and approve sending DWR a joint GSA Response to SWRCB staff comments on the CMA, WMA and EMA GSPs

Mr. Steve Torigiani of Young Wooldridge LLP, legal counsel for CMA/WMA/EMA Member Agency Santa Ynez River Water Conservation District, gave a presentation regarding a proposed GSA response to the April 14, 2023 State Water Resources Control Board (SWRCB) staff comment letter concerning the three Santa Ynez River Valley Groundwater Basin Groundwater Sustainability Plans' (GSPs') characterization of the subsurface water within the Santa Ynez River Alluvium above the Lompoc Narrows and below Bradbury Dam. Mr. Torigiani explained that all three GSPs characterized such alluvium subsurface water as river underflow and as part of the surface water system, and not "groundwater" as defined by Water Code section 10721(g) of the Sustainable Groundwater Management Act (SGMA). The GSPs' characterization was based on the GSAs' investigation of the groundwater basin's surface and groundwater systems, as expressly authorized and required by SGMA, and best available science. Support for such characterization included a December 2021 Technical Memorandum prepared by Stetson Engineers (Stetson) documenting the hydrogeological basis for characterization of such subsurface water as underflow and water flowing in a known and definite channel, and thus part of the surface water system, which memorandum was appended to all three GSPs. He noted that the GSPs were submitted to DWR in January 2022, the public comment period for each GSP ended in June 2022, and that the SWRCB staff comment letter was surprisingly received almost a year after close of the public comment period through the California Department of Water Resources' (DWR's) GSP portal.

Mr. Torigiani summarized the main assertions made in the SWRCB staff comment letter. First, the comment letter asserts that all GSAs must presume all subsurface water is groundwater, unless and until the SWRCB decides otherwise, even if best available science indicates the subsurface water is not groundwater as defined by SGMA. Second, the letter suggests that the Buellton Reach of the alluvium – which is a relatively small reach of the river, does not meet the *Garrapata Creek* Decision four-test for a "subterranean stream," in particular, the part that requires the underlying bed and banks of the subsurface channel to be "relatively" impermeable in comparison to the permeability of the soils that comprise the alluvium. He noted that the comment letter does not recognize that "underflow" is a legal subset of a subterranean stream, and does not provide any evidence or argument contrary to Stetson's characterization of the subject surface water as underflow. In fact, the SWRCB staff comment letter does not mention Stetson's 2021 Technical Memorandum.

Mr. Torigiani presented the August 4, 2023 Staff Memorandum from GSA Agency Staff Members and described the attached cover letter and 2023 Stetson underflow report prepared as the proposed response to the SWRCB staff comment letter. Mr. Torigiani explained that the cover letter is focused on responding to the legal issues raised by the comment letter, including the SWRCB staff comment letter's assertion that all subsurface

water must be presumed to be groundwater until the SWRCB determines otherwise, and the Stetson underflow report is focused on responding to the geological, scientific, and other technical issues raised by the comment letter. Mr. Torigiani explained that SGMA expressly states that “water flowing in a known and definite channel,” which includes river “underflow” and a “subterranean stream,” is not groundwater for SGMA management purposes. He further explained that the Stetson underflow report includes analyses based on best available science demonstrating that the subject subsurface water meets the elements for “underflow,” as set forth in the *Garrapata Creek* Decision (based on the 1899 *Pomeroy* case) as well as the elements for a “subterranean stream” (if the subsurface water is not underflow) as also set forth in the *Garrapata Creek* Decision. Accordingly, based on best available science, the subject subsurface water is not groundwater as defined by SGMA.

Regarding the issue of the permeability of the bed and banks of the alluvium in the Buellton Reach questioned by the SWRCB staff comment letter, Mr. Torigiani pointed out that the Stetson’s underflow report concludes that such physical condition exists in that reach as the alluvium is 40 to 800 times more permeable than the underlying bed and banks which is comparable to other situations where the SWRCB found a subterranean stream to exist when applying the *Garrapata Creek* Decision test. Mr. Torigiani noted that the SWRCB staff comment letter did not expressly question the permeability of the alluvial channel in any other reach of the river above the narrows.

In conclusion, Mr. Torigiani said that the Stetson underflow report reaffirms, bolsters, and provides further support for, based on best available science, the GSPs’ characterization of the subsurface water within the alluvium above the Lompoc Narrows as part of the surface water system and not part of the groundwater system or groundwater. Thus, the GSAs are not required or authorized to manage such surface water pursuant to SGMA, and if the GSAs did manage such subsurface water lawsuits from riparian or other pumpers of underflow could arise. Mr. Torigiani also mentioned that the Stetson underflow report also identifies several prior SWRCB decisions and orders that consistently characterized and permitted the subject subsurface water as “underflow,” including subsurface water within the Buellton Reach. Finally, Mr. Torigiani noted that the lengthy proposed response was the result of a significant collaborative effort necessitated by the importance of issues raised by the SWRCB staff comment letter relative to the adequacy of the GSPs and the basin, and all GSA Agency attorneys and managers had the opportunity to review and provide input.

Discussion followed. There was no public comment.

CMA GSA Committee Member Steve Jordan made a MOTION for the WMA GSA Committee to approve the Response in substantially the form presented and authorizes its chair or other committee member, if the chair is unavailable, to sign the cover letter transmitting the Response to DWR on behalf of the GSA. GSA Committee Member Myron Heavin seconded the motion. Discussion followed and public comment was received. The motion passed unanimously by roll call vote.

5. Next WMA GSA Regular Meeting, Wednesday, August 23, 2023, 10:00 a.m. at Vandenberg Village Community Services District, Board Room, 3745 Constellation Rd., Lompoc


WMA GSA Committee Chair Chris Brooks announced the next WMA GSA regular meeting will be Wednesday, August 23, 2023, at 10:00 a.m., at the Vandenberg Village Community Services District Board Room, 3745 Constellation Road, Lompoc, California.

6. WMA GSA Committee reports and requests for future agenda items

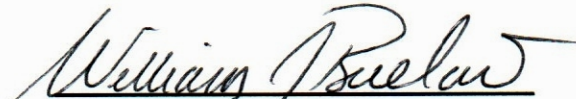
WMA GSA Committee Member Steve Jordan requested an update on efforts and urged the staff and committee to move forward in developing future governance, cost sharing, rate study, and a JPA for the WMA GSA with a goal to reduce or stop cost shares from the member agencies.

7. Adjournment

WMA GSA Chair Chris Brooks adjourned the meeting at 10:43 a.m.



Chris Brooks, Chairman



William J. Buelow, Secretary