

**UPPER VENTURA RIVER GROUNDWATER AGENCY MINUTES OF
REGULAR MEETING MARCH 10, 2022**

The Regular Board meeting was held via teleconference, in accordance with Upper Ventura River Groundwater Agency Board Resolution No. 2021-05. Directors present were Vivon Crawford, Bruce Kuebler, Susan Rungren, Pete Kaiser, Glenn Shephard, and Diana Engle. Also, present: Executive Director Bryan Bondy, Agency Counsel Keith Lemieux, and Administrative Assistant Maureen Tucker. Identified public members present: Jennifer Tribo, Mary Bergen, William Weirick, Michael Flood, Jennifer Tribo, Richard Hajas, Burt Handy, Trey Driscoll, Betsy Cooper, Kelly Dyer, Laura Ward, Brian Brennan, and Anne Lombard.

1) CALL TO ORDER

Chair Engle called the meeting to order at 1:02 p.m.

2) PLEDGE OF ALLEGIANCE

Executive Director Bryan Bondy led the Pledge of Allegiance.

3) ROLL CALL

Executive Director Bondy called roll.

Directors Present: Bruce Kuebler, Susan Rungren, Pete Kaiser, Glenn Shephard, Diana Engle, and Vivon Crawford

Directors Absent: Emily Ayala

4) APPROVAL OF AGENDA AND RENEWAL OF RESOLUTION NO. 2021-05

Chair Engle asked for any proposed changes to the agenda. None were offered. Chair Engle as about continued use of Resolution No. 2021-05 and the emergency declaration status. Agency Counsel Lemieux said the emergency declaration has not ended and the Agency can continue to hold meetings remotely until further notice.

Director Kaiser moved agenda approval and renewal of Resolution 2021-05. Director Rungren seconded the motion.

Roll Call Vote: B. Kuebler – Y D. Engle – Y G. Shephard – Y

 S. Rungren – Y P. Kaiser – Y V. Crawford - Y

Director Absent: Emily Ayala

5) PUBLIC COMMENTS ON ITEMS NOT APPEAR ON THE AGENDA

Chair Engle called for public comments on items not appearing on the agenda.

William Weirick commented on the City of Ojai’s letter requesting to be added as a member in the UVRGA joint powers agreement. The City of Ojai has land use planning authority over a portion of the groundwater basin and can help with funding for GSP implementation.

6) CONSENT CALENDAR

- a. Approve Minutes from February 10, 2022 Regular Board Meeting
- b. Approve Financial Report for February 2022

Director Kaiser moved approval of the consent calendar items. Director Rungren seconded the motion.

Roll Call Vote: B. Kuebler – Y D. Engle – Y G. Shephard – Y

 S. Rungren – Y P. Kaiser – Y V.Crawford – Y

Director Absent: Emily Ayala

7) DIRECTORS ANNOUNCEMENTS

- a. Directors may provide oral report on items not appearing on the agenda.

Director Crawford: No report.

Director Kuebler: Director Kuebler attended the most recent Ojai Basin Groundwater Management Agency Board (OBGMA) meeting and the State Water Resources Control Board (SWRCB) model webinar.

Director Rungren: No report.

Director Shephard: No report.

Director Kaiser: No report.

Director Engle: Chair Engle attended the SWRCB model webinar.

8) EXECUTIVE DIRECTOR'S REPORT

Executive Director Bondy reviewed the written staff report concerning Agency matters since the last Board meeting. He summarized correspondence received from the County of Ventura concerning expiration of the well permit exemption and two issued well permits and from the City of Ojai concerning a request be added to the UVRGA joint powers agreement.

Chair Engle said she was concerned about the water demand numbers presented by SWRCB. Executive Director Bondy said he will investigate the issue when he reviews the model report.

Chair Engle asked if the newly permitted agricultural well will be subject to forthcoming UVRGA metering requirements. Executive Director said no because the well is being completed in bedrock, below the basin aquifer.

Director Kaiser thanked the Executive Director. He said he was copied on the City of Ojai letter and asked what the terms and conditions for adding a new member would be. The Executive Director said the joint powers agreement does not provide any guidance; the terms and conditions could be whatever the Board decides.

Public comments: none.

9) ADMINISTRATIVE ITEMS

a. Second Reading of February 10, 2022, Motion Concerning Ojai Basin Groundwater Sustainability Plan Review

The Executive Director explained the joint powers agreement voting procedures for first and second readings of items and said that this item is a second reading of a failed motion from the prior Board meeting.

Chair Engle clarified that motion does not include any technical review of the Ojai Basin GSP. The intent of the motion is for a review to determine if the Ojai Basin GSP contains the required SGMA elements.

Chair Engle said that she received a request from Director Ayala to read comments to the Board in her absence. She asked Agency Counsel Lemieux for guidance, particularly because Director Ayala had abstained during the first reading vote due to her position as an alternate director on the OBGMA Board of Directors. Agency Counsel Lemieux said that an absent director does not have a right to have their comments read and it is up to the director who received the request. Agency Counsel Lemieux said that he's not convinced that Director Ayala's OBGMA position is a conflict of interest but providing comments on an item she abstained from voting on would undermine her abstention.

Chair Engle asked for Director comments.

Director Kaiser asked for clarification on the motion. Does it include technical review?
Chair Engle said no.

Director Kaiser asked the Executive Director if he has discussed the Ojai Basin GSP with the OBGMA Executive Director John Mundy. Executive Director Bondy said no.

Director Kaiser asked the Executive Director if he has had any prior review of the Ojai Basin GSP. Executive Director said the Board directed him to review the draft GSP and make comments during the OBGMA public hearing. He was unable to complete that task because of the last-minute comments received from the National Marine Fisheries Service on the UVRGA draft GSP. Executive Director Bondy said he has not looked at a single page of the Ojai Basin GSP.

Director Kaiser expressed concerns about reviewing a sister agency's GSP and asked the Executive Director if he thinks this is an issue. Executive Director Bondy said the outcome of the whole process could be simply to coordinate and collaborate with OBGMA.

Chair Engle expressed concerns about expecting Executive Director Bondy to mediate a political debate. She wants to leave the Executive Director out of the debate and wants to protect his reputation. She said staff is very important to UVRGA.

Director Kuebler read a prepared statement (see attachment to these minutes).

Director Kaiser asked Executive Director Bondy if there are unintended consequences for reviewing another GSA's GSP? Would that cause DWR to take a closer look at the UVRGA GSP? Executive Director Bondy stated that there is no guarantee that the same DWR staff would be reviewing both plans.

Director Shephard asked about the DWR comment period timing. Executive Director Bondy said the DWR comment period is open through the end of April for the Ojai Basin GSP.

Chair Engel called for public comments.

William Weirick said he appreciates Chair Engle's summary of the matter. What is described as a political debate is also a legal debate. The adjudication trial begins on March 16 and the parties have different definitions of depletion of interconnected surface water. It is challenging to ask the Executive Director to make determinations on a subject that is the focus of litigation. He said the Ojai Basin GSP was developed to address the issues that were identified in the Ojai Basin GSP alternative. He noted that the UVRGA GSP includes certain assumptions about the Ojai Basin that were not vetted with OBGMA.

Richard Hajas identified himself as OBGMA Chair and said he was troubled when he read Mr. Kuebler’s comments on the Ojai Basin GSP. He apologizes if Mr. Kuebler felt ignored, as there was no intent to ignore his comments. He noted it was an oral comment and an oral response was provided, but the OBGMA will respond more formally. Mr. Hajas recommended that Executive Director Bondy and Dudek discuss the matter. Mr. Hajas agreed with Chair Engle that the Board should not get its technical people involved in the legal or political issues.

Bert Rapp said it is very important for UVRGA to have a good comfort level that the Ojai Basin GSP properly addresses surface water flows in San Antonio Creek. If the answer is no impact, we need a good comfort level on that.

Chair Engle asked Executive Director Bondy if he feels he can execute the direction to staff in the motion without bias. Executive Director Bondy said he can. He added that he has reviewed many GSPs and knows the regulations well.

Director Kaiser said he does not believe there needs to be a motion and the Board can just direct staff to work with OBGMA.

Chair Engle says her Motion does not preclude outreach by the Executive Director.

Director Kaiser asked why would the Agency spend money on something it may not act on?

Chair Engle said because it is information and that she is not withdrawing her motion.

Executive Director Bryan Bondy clarified that there would need to be a new motion and second.

Chair Engle moved the motion from the first reading, as presented in the staff report:

“Direction to Executive Director to review the Ojai Basin Groundwater Sustainability Plan (GSP) to determine whether the GSP includes required elements under the Sustainable Groundwater Management Act for depletions of interconnected surface water and assessment of effects of the GSP on sustainable management of the Upper Ventura River Basin and report findings to the Board of Directors.”

Seconded by Director Kuebler.

Roll Call Vote: B. Kuebler – Y D. Engle – Y G. Shephard – N

 S. Rungren – Y P. Kaiser – N V.Crawford – Y

Director Absent: Emily Ayala

Motion passed 4-2.

Chair Engle asked about timing. Executive Director Bondy proposed making his report at the April 14 meeting. Nobody objected.

Director Kaiser asked about funding for this work. Executive Director said the Agency's budget includes funding for GSP coordination and outreach. He feels reviewing the GSP of a neighboring basin can be considered part of coordination.

b. Groundwater Extraction Fees

Executive Director Bondy introduced the item and summarized the Board direction to staff provided during the last meeting. He said this item is a follow-up on the Board's direction to proceed with implementation of the Proposition 218 process for groundwater extraction fees beginning the fiscal year 2022/2023. Executive Director Bondy asked Agency Counsel Lemieux to provide the update.

Agency Counsel Lemieux explained that he recommended proceeding with the Proposition 218 process during February 10, 2022 Board meeting out an abundance of caution, but after further review and analysis, he feels it is not clear cut that Proposition 218 is required and wanted to review with the Board before proceeding. He explained that there are two different processes for adopting fee included in the Water Code. These include Water Code Section 10730, which does not require Proposition 218 and Water Code Section 10730.2, which does. He described the two sections and associated procedural requirements. He explained the risks and potential harm of using the Water Code Section 10730 approach. He concluded that he is prepared to change his recommendation based on the additional analysis.

Chair Engle thanked Agency Counsel Lemieux for the explanation. Chair Engle asked about Proposition 218 voting. Do water agencies get one vote each? Agency Counsel said it is appropriate to send notices to all of the District's rate payers and well owners, not to the water agency itself.

Director Shephard said he would like more details about who votes.

Director Kuebler said he would like to keep costs down as much as possible. Proposition 218 sounds expensive and Section 10730 is less costly to the Agency.

Director Kaiser asked Agency Counsel Lemieux about potential exposure and cost to defend a complaint. Agency Counsel Lemieux said the Agency could choose to "correct" as opposed to fight a complaint. Director Kaiser expressed his preference for being upfront and transparent. He recommends performing Proposition 218.

Chair Engle called for public comments. None were offered.

Chair Engle said completing the Proposition 218 process would be expensive.

Director Shephard said the minutes from the previous Board meeting indicate that the Board voted to direct staff to proceed with Proposition 218, so it seems like the ship has already sailed.

Executive Director Bondy agreed with Director Shephard and explained that Agency Counsel now has more information and analysis that he feels may have resulted in a different Board decision had it been available at that time. Proposition 218 is expensive, and staff just wants to confirm in light of the additional information before spending a significant amount of funds.

Agency Counsel Lemieux stated at the last meeting he did not adequately brief the Board. He wanted to make these options clear to the Board at this meeting.

Director Rungren said Proposition 218 is time consuming and expense. If Agency Counsel is advising that the Agency can legally implement the extraction fee using Water Code Section 10730, then we should do that.

Chair Engle asked if we could change the fee after implementing one year. Agency Counsel Lemieux said the Agency can change the fee at any time.

Director Engle said she would support proceeding under Water Code 10730 and reevaluating next year. Directors Kuebler, Rungren, Crawford, and Shephard agreed. Director Kaiser says he can live without going the Proposition 218 route this year. He would like to do the right thing and have the Agency be protected. He would like more information from counsel.

Director Kuebler moved to proceed using Water Code Section 10730.

Director Kuebler withdrew the motion.

Director Kuebler moved to rescind the February 10, 2022 direction to staff concerning Proposition 218 and to direct staff to proceed under Water Code Section 10730.

Roll Call Vote: B. Kuebler – Y D. Engle – Y G. Shephard – Y
 S. Rungren – Y P. Kaiser – Y V.Crawford - Y

Director Absent: Emily Ayala

Executive Director Bondy stated that he understood from the discussion that the intent is to develop an extraction fee for one year even though it was not stated in the motion. Nobody disagreed.

10) GSP IMPLEMENTATION ITEMS

None.

11) COMMITTEE REPORTS

a. Ad Hoc Stakeholder Engagement Committee

No report.

12) FUTURE AGENDA ITEMS

April 14, 2022 item to receive a presentation from the City of Ojai and discuss terms and conditions for joining UVRGA.

13) ADJOURNMENT

The meeting was adjourned at 3:09 p.m.

Action: _____

Motion: _____

B.Kuebler__ D.Engle_ P.Kaiser__ S.Rungren__ G.Shephard__ V.Crawford__ J. Kentosh__

OJAI BASIN
ALTERNATIVE DEMONSTRATION
AND GSP

The concern I raised at OBGMA's Sept 30 meeting and at our meeting on Feb 10 is similar to DWR's in rejecting the Basin's Alternative Demonstration. Here is what DWR said in their July 17, 2019 Alternative Assessment Staff Report.

"The Groundwater Model Report states that "during extended drought periods, groundwater discharge to San Antonio Creek decreases dramatically, and groundwater extraction during the drought periods contributes to this decline." The Alternative Report and Groundwater Model Report do not quantify the depletion of interconnected surface water due to groundwater use, and the Agency has not declared any limit of depletion to be unacceptable or subject to management actions."
Page 16 of 30.

"The Groundwater Model Report describes calculation of the safe yield in greater detail, but reiterates that the average safe yield is based solely on maintaining average groundwater elevations in the Basin, and concedes that *"[a] full understanding of annual [Ojai] Basin safe yield should consider the desired minimum groundwater*

discharge rates to San Antonio Creek, which is beyond the scope of this study.” No evidence was provided to indicate that subsequent studies of safe or sustainable yield considered impacts to stream flows, desired or optimal minimum groundwater discharge rates to San Antonio Creek , or any of the other undesirable results listed in SGMA except for those related to groundwater levels and storage.” Page 26 of 30.

“The Groundwater Model Report notes that during droughts, groundwater extraction contributes to the dramatic decreases of groundwater discharge to San Antonio Creek, which indicates that groundwater is interconnected with surface water and that groundwater extraction has the potential to deplete the interconnected surface water system and adversely impact groundwater dependent ecosystems. Because the San Antonio Creek is tributary to the Ventura River and provides water to downgradient groundwater basins, the groundwater extraction in the Ojai Basin has the potential to adversely affect downgradient basins and their sustainability goals. The Groundwater Model Report states that *“[a] full understanding of annual Basin safe yield should consider the desired minimum groundwater discharge rates to San Antonio Creek.”* In fact, SGMA requires a demonstration of sustainable

yield, not simply safe yield; nevertheless Department staff were not able to find evidence in the Alternative to indicate that the Agency evaluated such factors as the minimum desired discharge rates to the creek and whether the discharge rate was within a desired or optimal minimum amount during the period of analysis. Absent that type of information, it is not possible to determine whether undesirable results related to depletion of interconnected surface water exist.” Pages 28 and 29 of 30.

As a downgradient basin, I believe our Agency has a responsibility to review the Ojai Basin GSP to see if this deficiency has been corrected.

BWK 3-8-22