



6.22.2022

Eastern San Joaquin Groundwater Authority and Groundwater Sustainability Agencies
P. O. Box 1810
Stockton, CA 95201
Via email: ESJgroundwater@sjgov.org

Re: Revision Process for the “Incomplete” Groundwater Sustainability Plan to Manage the Eastern San Joaquin Subbasin

We request the immediate release of the 2022 draft Groundwater Sustainability Plan (GSP) revision and draft technical memorandum for public review. No draft reports responding to the Department of Water Resources’ determination of “Incomplete” have been released for public comment and these reports are intended to be submitted to the Department of Water Resources by 7.27.2022. We have prepared a review of the January 2020 GSP development process, regulatory responses, and the Groundwater Authority’s July 2022 GSP revision process for your consideration and to describe ongoing issues regarding stakeholder outreach and engagement.

Background

The Eastern San Joaquin Subbasin encompasses most of San Joaquin County and small parts of Calaveras and Stanislaus Counties as shown below:¹



The final Eastern San Joaquin Groundwater Sustainability Plan (GSP) was submitted by the Groundwater Authority in January 2020 giving the 16 Groundwater Sustainability Agencies (GSAs) 20 years to effect changes that achieve groundwater sustainability. GSAs are required to enact management practices that avoid undesirable results, including “significant and unreasonable” depletion of groundwater aquifers, degraded water quality and land subsidence.

Even before the Sustainable Groundwater Management Act (SGMA) became effective (Water Code) and regulations were adopted (California Code of Regulations), the Eastern San Joaquin Subbasin water managers were meeting about the basin’s overdraft. The basin aquifer became overdrafted because more water is being pumped out than is being added through recharge mechanisms.

¹ <http://www.esjgroundwater.org/About-Us> accessed 6.14.2022

Eastern San Joaquin Groundwater Authority representing 16 Groundwater Sustainable Agencies, Stakeholder Engagement, and Groundwater Sustainability Plan Development prior to Jan 2020

These water managers became Directors of the Eastern San Joaquin Groundwater Authority formed in 2017, with representatives from each of 16 GSAs that were previously established based on existing jurisdictional boundaries, for the most part. At nearly every meeting, the Groundwater Authority Board of Directors (Groundwater Authority) was informed that public participation was required and often that an opportunity for public comment is required prior to a vote. This has continued, although less often but still does occur. Most recently, notes taken at the 5.11.2022 Groundwater Authority meeting document that there was no request for public comment on the prior meeting minutes before calling for the vote.

Regarding public participation requirements during GSP development, the Department of Water Resources (DWR) was contacted because a DWR facilitation grant that was awarded to the Groundwater Authority with an approved workplan dated September 15, 2017, was not being fully implemented. There was little to no public engagement other than Groundwater Authority meetings. In response, the Groundwater Authority formed the Groundwater Sustainability Workgroup in June 2018. This Workgroup consisted of a diverse group of agricultural, environmental, and community advocates discussing issues related to many of the issues still unresolved such as GSA water budgets and funding. The Workgroup activities were outlined in the Stakeholder Engagement and Public Outreach Plan dated 6.25.2018.²

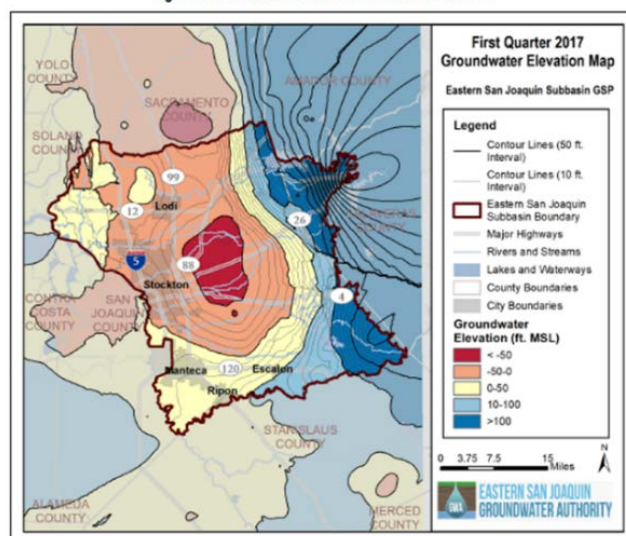
The Delta-Sierra Group of the Sierra Club, Restore the Delta, The League of Women Voters of San Joaquin County, Environmental Justice Coalition for Water, and PUENTES submitted correspondence dated 7.17.2019 to the Groundwater Authority and associated GSAs regarding public outreach and engagement problems and solutions.³ Unfortunately, one of the more effective strategies for public outreach and engagement, the Workgroup was ended by email 8.12.2019 with a final meeting 9.11.2019. The last documentation of the Groundwater Sustainability Workgroup was the 6.12.2019 meeting agenda and materials. No minutes of the June 2019 or September 2019 meeting have been made available.

The Delta-Sierra Group continued to engage in the GSP development process submitting comments on the Draft GSP to the Groundwater Authority on 8.25.2019⁴ and on the 2020 Final GSP to the DWR dated 5.15.2020⁵.

Figure 2-37 from the 2020 Final GSP shows where the cone of depression - greatest groundwater overuse - is thought to be located and indicated with a dark red color. This figure leads to the impression that there is one large area in the Subbasin that is overdrafted; however, there are other localized areas that are overdrafted which are difficult to assess due to the limited number of monitoring wells. Impacts to shallower wells - domestic and irrigation for small farms - continued to be ignored without a mitigation plan to protect the most vulnerable users.

The Groundwater Authority continued to object to having to consider impacts to shallower domestic wells by writing a letter commenting on DWR draft funding criteria. In November 2021, the Delta-Sierra Group submitted comments in writing to the Groundwater Authority Steering Committee and DWR Grant Program Manager:

Figure 2-37: First Quarter 2017 Groundwater Elevation



² https://www.sigov.org/docs/default-source/public-works-documents/water-resources/esi-final-gsp-appendices_5nov19.pdf?sfvrsn=7095f8e6_3

³ <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/Collective%20Comments%20on%20GSA%20outreach%20activities%20%20071719%20final.pdf>

⁴ https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/delta-sierra-group/DSGComment_ESJGSP_08.25.19_1846.pdf

⁵ https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/DSG_FinalGSP_EJSGSB_05152020_final.pdf

Impacts to domestic wells relating to offsite contamination sources and decreased groundwater levels should be considered under SGMA and efforts put forth to mitigate in order to obtain sustainability for these indicators. Our most vulnerable and disadvantaged communities that have water supplies impacted by these indicators must be considered for extra funding opportunities. The Groundwater Authority's position that domestic well supply limitations should not be considered as a basis for funding selection is objectionable. I believe that the Groundwater Authority can view these funding constraints as an opportunity to more effectively consider domestic well impacts and develop a groundwater sustainability plan that considers all stakeholders.

Regulatory Findings and Determinations

State Water Resources Control Board

The State Water Resources Control Board (SWRCB) is the regulatory agency that will govern the Eastern San Joaquin Subbasin should the DWR determine the 2022 revised GSP is inadequate. The SWRCB Members have been receiving regular updates about SGMA should they have to assume the role of management agency.

In advance of the DWR determination, the State Water Resources Control Board submitted comments to the Eastern San Joaquin Groundwater Authority dated 8.23.2021 regarding issues of concern:

- Groundwater Levels and Potential Drinking Water Impacts
- Groundwater Quality
- Depletions of Interconnected Surface Water
- Water Budget
- Projects Reliant on New or Amended Water Rights
- Engagement

The SWRCB correspondence was included in the 9.8.2021 Groundwater Authority Meeting.⁶ Staff dismissed the comments as “cut and paste” and indicated that the comments were not requested by the DWR, but rather a form of public comment and did not require a formal response from the Board, as reported in the minutes included within the 12.8.2021 Groundwater Authority meeting agenda information.⁷

Department of Water Resources

The DWR is the lead regulatory agency for implementing the SGMA regulations. The DWR issued correspondence to the Eastern San Joaquin Groundwater Authority dated 11.18.2021 which outlined deficiencies identified in review of the GSP. This DWR letter was included in the agenda packet for the 12.8.2021 Groundwater Authority Meeting.⁸

The DWR issued their final determination that the 2020 Eastern San Joaquin Subbasin GSP was incomplete on 1.28.2022. The DWR determination letter included the due date of 7.27.2022 for submission of a revised GSP and if the revisions address the identified deficiencies, the DWR will determine that the GSP is approved. If the revised GSP does not address the identified deficiencies, then the DWR will determine the GSP to be inadequate and refer the basin to the SWRCB for corrective action. The SWRCB may identify additional deficiencies that the GSAs would need to address in the state intervention process as outlined in SGMA.

An open and transparent evaluation process was used by DWR to determine that the 2020 Eastern San Joaquin GSP was incomplete. The following includes a summary and excerpts from the DWR 1.28.2022 determination letter regarding the evaluation process.

To evaluate a GSP, the DWR must first determine a GSP was submitted by the statutory deadline, evaluates the GSP to determine whether it complies with SGMA and substantially complies with the GSP Regulations. When evaluating whether implementation of the GSP is likely to achieve the sustainability goal for the basin, DWR staff review the information provided and relied upon in the GSP for sufficiency, credibility, and consistency with scientific and engineering professional standards of practice. The DWR's review considers whether there is a reasonable relationship between the information provided by the GSA and the assumptions and conclusions presented in the GSP, including

⁶ <http://www.esigroundwater.org/Portals/0/20210908%20ESJ%20JPA%20Agenda%20Package.pdf?ver=tgHWKb-SHAZMNtYtjaAtOA%3d%3d>

⁷ <http://www.esigroundwater.org/Portals/0/20211208%20GWA%20Board%20Agenda%20Package.pdf?ver=BCaGji8PA3jrQEEN3GIwkg%3d%3d>

⁸ <http://www.esigroundwater.org/Portals/0/20211208%20GWA%20Board%20Agenda%20Package.pdf?ver=BCaGji8PA3jrQEEN3GIwkg%3d%3d>

whether the interests of the beneficial uses and users of groundwater in the basin have been considered; whether sustainable management criteria and projects and management actions described in the GSP are commensurate with the level of understanding of the basin setting; and whether those projects and management actions are feasible and likely to prevent undesirable results. The DWR also considers whether the GSA has the legal authority and financial resources necessary to implement the GSP.

The DWR review of the Jan 2020 GSP was thorough and the suggestions thoughtful and explicit.

Eastern San Joaquin Groundwater Authority Responses to DWR GSP Incomplete Determination

February 2022

The Technical Advisory Committee (TAC) meetings were open to the public on a limited basis as indicated with the statement included in the TAC meeting material dated 2.3.2022: “Note to participants: Members of the public, most staff and other GSA/GWA persons may participate via the teleconference line only. Thank you for your understanding.” The 2.3.2022 TAC meeting material also included DWR communications and proposed “GSP Incomplete” response approaches. This meeting material file is no longer available to the public because the information was removed from the website as well as all TAC meeting materials following the submission of the GSP in 2020 to DWR. The TAC meeting presentations and discussions enabled members of the public to better understand the recommendations which are presented to the Groundwater Authority for approval. Without access to this material, it is difficult to meaningfully participate in the Groundwater Authority meetings especially when all meeting materials are not available in advance of the meetings.

The 2.3.2022 TAC meeting materials included a slide deck dated January 2022 and entitled: “2020 Groundwater Sustainability Plans: Incomplete Determinations and Next Steps”. The content of this slide deck and location in the meeting materials suggested that DWR prepared this information and distributed in advance of January 2022 determination letters. This slide deck included the following statement: “Should follow open and transparent process with public engagement.” Subsequently, during the 3.16.2022 meeting of the NGO Groundwater Collaborative, Paul Gosselin of DWR made similar statements regarding public engagement. Statements such as these indicate that there was an expectation that interested parties and stakeholders would be engaged during the revision process. This did not occur, in fact quite the opposite as will be described further.

A request for public information was made on 2.3.2022 to obtain the presentation information from the TAC meeting and to obtain the meeting recording (notified when entering the “room”). On 2.14.2022, the San Joaquin County Office of the County Counsel responded to a public information request with the material requested and the meeting notes. County Counsel decided to provide the recording “as a gesture of good faith” and noted “that since this is an ad hoc committee, the recordings are not kept in the ordinary course of business. In the future, they will be destroyed as soon as the notes for them meeting are prepared.” Providing audio and/or video recordings on the website could greatly improve stakeholder’s opportunities to follow Groundwater Authority activities related to the development and implementation of the GSP, especially when meetings are not regularly held and when held, occur during the daytime working hours. No evening meetings of the Groundwater Authority have been held since the GSP was submitted in January 2020.

The Eastern San Joaquin Groundwater Authority Board of Directors held a special meeting time on 2.9.2022 which included a workshop to present the model and water accounting/funding and finance update. Part of the information now available on the Eastern San Joaquin Groundwater Authority website was made available before the meeting. Below is a screenshot obtained on 6.22.2022 and included as reference the Eastern San Joaquin Groundwater Authority public meetings since receipt of DWR’s determination.⁹

On 2.9.2022, the Delta-Sierra Group Conservation Chair provided comments in person and in writing to the Eastern San Joaquin Groundwater Authority regarding the availability of information on the website, that stakeholder outreach should be a priority not an afterthought, and that groundwater impacts require mitigation and careful consideration of specific projects and management options to mitigate not a “push back” response.¹⁰

⁹ <http://www.esjgroundwater.org/Agendas>

¹⁰ https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/ESJGWA_2.9.2022_0.pdf

Also, a 2.9.2022 staff memo included on the website which was not made available in advance of the meeting seems to be the basis of the prohibition of the public to observe the TAC meeting.¹¹

March 2022

The 3.9.2022 Groundwater Authority Board of Directors met and included in the materials distributed in advance were the 2.9.2022 meeting minutes that stated: “The Workshop was recorded and made available on the ESJGroundwater.org

website.” The recording has not been located on the website and no formal request was made to staff. A formal public information request was made on 6.14.2022 for the recording to be posted and provided.

On 6.20.2022, San Joaquin County Counsel responded with “Please be advised that the minutes are in error; the recordings are not maintained after the minutes are prepared and will not be posted on the website or be made available.” Public information is limited to a slide deck without the verbal explanation narrative which would have helped stakeholders understand the slides. Evidently, audio recordings for neither ad hoc or Groundwater Authority meetings are retained for the record. Audio recordings and/or video recordings of meetings are essential parts of stakeholder outreach.

May 2022

Two meetings were scheduled on 5.11.2022: the Groundwater Authority Board of Directors and the Steering Committee. After attending the Groundwater Authority meeting that was a whirl of information not made available in advance of the meeting, a public information request was made and within the week the 43-slide deck presentation pdf file was posted on the website.¹² The 5.11.2022 Steering Committee meeting – at which the budget was to be discussed - was cancelled. The rescheduled Steering committee meeting was noticed on 5.27.2022. A special Steering Committee meeting occurred on 6.1.2022 beginning at 9:30 AM. The Steering Committee is made of various directors so as not to have a quorum Groundwater Authority, but at the 6.1.2022 meeting a director not on the Steering Committee made a motion. It is unknown whether the quorum limitation was violated. On 6.1.2022 at 8:54 AM a notice was distributed that the June 8, 2022, Groundwater Authority and Steering Committee meetings were cancelled. As the meeting cancellation occurred before the Steering Committee meeting occurred the Groundwater Authority was not consulted about the cancellation of this important meeting to discuss comments relating to draft GSP revision documents.

Groundwater Sustainability Plan Revision Schedule

The following is a table of scheduled events leading to the July 2022 submission of a revised GSP and which was published by the Groundwater Authority and included in meeting materials various times over the last several months.

2022

GROUNDWATER AUTHORITY BOARD	STEERING COMMITTEE
June 8 Cancellation Notice	June 8 Steering Committee Cancellation June 1 Special Steering Committee Meeting
May 11 Agenda May 11 Meeting Presentation and Materials	May 11 Steering Committee Cancellation
April 13 Agenda	April 13 Steering Committee Cancellation
March 9 Agenda	March 9 Steering Committee Cancellation
February 9 Agenda	February 9 Steering Committee Cancellation
Workshop Presentations	
Staff Report Material	
January 12 Cancellation Notice	
January 12 Agenda	January 12 Steering Committee

¹¹ <http://www.esjgroundwater.org/Portals/0/DRAFT%20DWR%20Comment%20Response%20Process%20-%20Staff%20Report%20and%20Process.pdf?ver=VPrNaEDRP7YhsFEKXcDiQA%3d%3d>

¹² http://www.esjgroundwater.org/Portals/0/20220511%20ESJ%20GWA%20Meeting%20Presentation%20and%20Materials.pdf?ver=-3B36nK_L5jVo-PwVeYrA%3d%3d

Draft Schedule

Date	Group	Agenda items	Deliverables/Notes/Questions
5/5/2022	TAC/Legal	1. DWR Response a. Status b. Schedule and Scope 2. TAC budget discussion and FY 22_23 Work elements 3. Exec Order a. GSA responses and approaches b. EHD approach	1.b work plan schedule, scope 2. Staff brief on budget elements
5/6/2022		Send out draft TMs 2 (Def 1de), 3 (Def 1f) and 4 (Def 2) for review	
5/11/2022	Steering	1. Draft Budget - Preliminary Technical work and budget Assumptions and Costs 2. Status of DWR comment. Discuss any Policy issue; discuss scope and approach to implementing PMAs	Develop high-level scope and costs for PMAs
5/19/2022	TAC/Legal	1. Discuss TMs 2, 3 and 4 2. Present results of PMAs simulation	Final comments due back by May 16th
5/27/2022		Send out draft TM1 (Def 1a, b and c)	Comments due back by May 31st
6/2/2022	TAC/Legal	1. Accept comments/discuss draft TMs 2-4 2. Discuss comments on draft TM1 3. Present redline/strikeout edits to GSP	Receive and discuss responses, direct sending to GSAs for comment. Comments from TAC due by 6/9
6/16/2022	Steering/Board	Receive 6/2 TAC results for GSA review, discuss GSA comments, direct final draft CA e-i. Final Budget	Mail out for meeting materials is 6/10
6/17/2022		Mail all TMs & Redline GSP to GSAs for review	GSA comments on TMS due by 7/1 along with schedule for adoption
6/23/2022	TAC/Legal	CA a, b, c and d; GWL and SMC Memo Reconcile/discuss GSA Comments on CA e-f and finalize	Direct sending to GSAs CA a, b, c, d, Comments due from GSA 7/1/2022
7/1/2022		Comments on TMs and Redline GSP due	
7/13/2022		Compile final response package, send to GWA Board	All documents finalized by 7/11
7/20/2022	GWA Board	Action on Response Package	
7/27/2022		Upload revised/amended GSP to SGMA Portal	

The timetable does not include any time for public outreach to obtain comments regarding the technical memorandum (TMs) or redline GSP revisions before submitting to the Department of Water Resources by 7.27.2022, other than required public comment (limited to 3 minutes) during a GSA public hearing meeting when the revised GSP will be adopted. The Groundwater Authority has not disclosed when they will release the draft document prior to the adoption public hearings. Thankfully, DWR has committed to a public review process after revised GSP submittal.

This Eastern San Joaquin Groundwater Authority GSP revision process seems to conflict with communication regulations. Groundwater Sustainability Plan Regulations (Section 354.10) require a communication section to include the following¹³:

1. An explanation of the Agency's (GSAs) decision-making process.
2. Identification of opportunities for public engagement and a discussion of how public input and response will be used.
3. A description of how the Agency (GSA) encourages the active involvement of diverse social, cultural, and economic elements of the population within the basin.
4. The method the Agency (GSA) shall follow to inform the public about progress implementing the Plan, including the status of projects and actions.

Instead, the GSA has violated its own stakeholder engagement and outreach plan, as published in Appendix 1-H of their submitted 2020 GSP. Those violations include

- Dissolution of the stakeholder advisory committee, which was not identified as a temporary body in the plan and in fact is charged with review annual reports and five-year plans.
- Failure to hold "inform and obtain comments from the general public through public meetings held on an approximately quarterly basis."
- Failure to "provide timely and accurate reporting of planning milestones through the distribution of outreach materials and posting of materials on the GWA website for the GSP."
- Failure to include all meeting minutes and final annual reports on GWA website.

¹³ Department of Water Resources. *Guidance Document for Groundwater Sustainability Plan Stakeholder Communication and Engagement*. January 2018

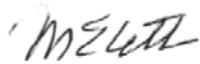
The Groundwater Authority, Environmental Health and Office of Emergency Services have been contacted to discuss applying for SAFER funds to help with outreach. Wells in the Eastern San Joaquin Subbasin are reportedly going dry and in some cases, contamination has prompted offsite water deliveries according to the Office of Emergency Services. The Environmental Health Department is reportedly considering various options to comply with the Governor's Emergency order requiring additional considerations before a new irrigation well can be drilled. There are no public meetings planned to essentially amend the County Well Standards requiring this additional consideration before an irrigation well permit to drill is issued according to staff on 5.11.2022, communicated after the Groundwater Authority meeting. The Groundwater Authority Board of Directors were not briefed in public about what is happening to comply with the Governor's Executive Order or the status of well impacts related to the drought and ongoing over pumping during the 5.11.2022 meeting.

Outreach to those most vulnerable will not occur unless an outside agency or organization takes on the task. Our disadvantaged domestic well owners do not have the means to drill new wells. Comments from Groundwater Authority Directors indicate that some believe that there is absolutely no reason for a well mitigation program and public funds cannot be spent on private resources. Those groundwater users that are directly impacted by lowering groundwater elevations include disadvantaged residents served by shallower domestic wells and small-scale irrigation wells.¹⁴ Our small-scale farmers, <50 acres, are diverse with many languages spoken yet the Eastern San Joaquin Groundwater Authority has not taken advantage of the translation services offered by the DWR. Small water groundwater systems, shallow domestic and irrigation wells are the most vulnerable to impacts resulting from over pumping and drought. Who knows if the Groundwater Authority has gotten the message and included adequate groundwater monitoring and mitigation measures for dry well impacts?

Stakeholder outreach should be a priority not an afterthought.

Please feel free to contact us to discuss stakeholder engagement and education.

Sincerely,



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¹⁴ <https://www.cleanwateraction.org/sites/default/files/docs/publications/Underrepresented%20Farmers%20and%20SGMA.pdf>