

EXHIBIT
Authority Voting Structure

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To: Board of Directors
Tri-Valley Groundwater Management District

From: Jason Canger
Deputy County Counsel, Mono County

Date: July 18, 2017

Re: Summary of Joint Powers Agreement Establishing the Owens Valley
Groundwater Authority

In this office's view, the most significant features of the Owens Valley Groundwater Authority (Authority) Joint Powers Agreement (JPA) proposed by Inyo County are the following:

1. Participation in the Authority is open to a wide variety of public entities and interested parties in the groundwater basin.
2. The JPA provides for flexibility as to the financial contributions made by each participant and defers a decision on financial contribution to a later date when more information is known.
3. Entities may participate without making any financial contribution.
4. The JPA provides for the creation and funding of a groundwater sustainability plan (GSP), as required by the Sustainable Groundwater Management Act (SGMA), for the entire Owens Valley Groundwater Basin.
5. Voting power may be highly diluted for some or all participating entities depending on how many entities participate and the amount of their funding contributions.
6. Withdrawal from the Authority is somewhat limited.

The focus of this memorandum is Number 5 from the above list, the voting power of members, because this issue has caused the most concern among affected constituents and communities. A brief discussion of Number 6, withdrawal from the Authority, is also included in this memorandum.

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Membership and Voting Structure

The JPA creates essentially three “classes” of participants in the Authority:

1. Members – any entity eligible to serve as a groundwater sustainability agency (GSA) in the basin may be a Member. This includes cities, counties, and other public agencies that have water supply or water management responsibilities within the groundwater basin. There are 13 such entities in the basin, three (3) of which are in Mono County.
2. Associate Members – the four tribes located in Inyo County, the Los Angeles Department of Water and Power (LADWP), and certain federal agencies in the basin may join as Associate Members. Because the JPA requires that federal agencies join as one Associate Member, there are a total of nine (9) potential Associate Members.
3. Interested Parties – up to four (4) Interested Parties may join the Authority. These parties must represent the following categories of entities:
 - a. Agricultural businesses
 - b. Disadvantaged communities not already represented
 - c. Domestic well owner groups
 - d. Environmental organizations
 - e. Environmental users
 - f. Federal agencies
 - g. Mutual water companies
 - h. Non-agricultural businesses with private wells
 - i. Public water systems
 - j. State agencies
 - k. Tribes
 - l. Others listed in SGMA as interested parties.

There are additional subtleties to the membership structure (e.g., an entity seeking to participate that is not otherwise subject to SGMA must agree to subject its lands to the law, entities eligible to be both Associate Members and Interested Parties must decide which they prefer, etc.).

The JPA then allocates voting power to participants according to a specific formula. Members receive two (2) votes if they make no financial contribution, four (4) votes if they contribute an equal share (i.e., 1/total number of Members), and more votes if they contribute additional amounts. Members’ votes must account for at least 70% of the voting power of the Authority. In contrast, the number of votes allocated to Associate Members varies. For example, LADWP will have four (4) votes, the federal agencies will have two (2) votes, and each tribe will have two (2) votes. Finally, each Interested Party will receive one (1) vote for a

total of four (4) votes. The attached diagram attempts to illustrate the proposed voting structure of the Authority.

As can be seen, there are various scenarios under which the three Mono County entities (Mono County, Tri-Valley Groundwater Management District, and Wheeler Crest Community Services District) might become vastly outnumbered in terms of voting power on the Authority board of directors. This has raised concerns that the GSP (and in particular, the regulations and fees it will impose) will unfairly burden Mono County, its residents, districts, and interests. Outside of SGMA, there are safeguards in California law to mitigate these concerns (e.g., a regulatory fee cannot exceed the cost of regulation and must be fairly apportioned, regulations cannot be arbitrary or capricious, etc.). However, these protections have not relieved all concerns. Indeed, it is currently unclear how or whether the voting structure may negatively impact Mono County, Tri-Valley Groundwater Management District, Wheeler Crest Community Services District, as well as their members and residents. It will become more clear following August 1 and thereafter as the Authority is formed and budgetary and planning decisions made.

Entry Into and Withdrawal from the Authority

Inyo County has set a hard deadline of August 1 for eligible entities to join the membership of the Authority. After August 1, membership is not guaranteed but instead is subject to approval of the then-existing Authority board of directors. In addition, entities wishing to join the Authority after August 1 may be subject to any condition that the then-existing Authority board of directors may impose.

Although the JPA includes a hard deadline of August 1 for eligible entities to decide whether to join the Authority, nothing in the JPA prevents an entity from later withdrawing if it determines that it cannot (or is unwilling to) make a financial contribution for preparation of the GSP which is sufficient to provide the level of voting power it desires. Specifically, under the JPA, a Member may withdraw up until the Authority meeting where financial commitments are required to be made. Prior to that meeting, the Inyo County Water Department will prepare a GSP Development Budget. This budget must include an estimate of the total cost of preparing the GSP and will be presented to the Authority board of directors at an Authority meeting. Then, at the immediately following meeting, each Member must make a legally binding commitment of its financial contribution toward the GSP Development Budget. However, under the JPA, withdrawal is permitted up until the meeting where Members make their respective financial commitments (if any). After that meeting, withdrawal from the Authority is prohibited until the GSP is approved for implementation, which may be three (3) to five (5) years from now.

Another significant issue is the fact that the JPA requires joining Members who have previously elected to be the GSA within their jurisdictions to withdraw their initial GSA election within thirty days of the meeting at which the Authority decides to be a GSA for the basin. While the JPA does not speak to the relative timing of that meeting and the release of a GSP development budget, Inyo County staff has indicated that the meeting would or could occur following budget release. If this is indeed the case, a Member will have the opportunity to

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review the GSP Development Budget *before* making its final decision whether to withdraw or remain a part of the Authority. At its meeting on July 18, the Mono County Board of Supervisors voted to join the JPA with the caveat that the County would not withdraw its prior GSA decision until the GSP Development Budget is released.

Similarly, the District could join the Authority by August 1 and later decide to withdraw if it determines that it cannot or is unwilling to make the financial commitment toward the GSP Development Budget that provides it with sufficient voting power to feel comfortable as a Member of the Authority. The JPA does not include a hard deadline for such a withdrawal. Instead, to make sure its withdrawal is timely, the District must monitor the Authority's meeting schedule and activities to determine when the Inyo County Water Department presents the GSP Development Budget to the Authority board of directors. Prior to the immediately following meeting, the District must decide whether to remain a member or withdraw.

Because this process allows withdrawal at a later date, the District would have a chance to review the proposed GSP Development Budget and thus have more information on which to base its decision whether to remain a Member or withdraw from the Authority. However, once financial commitments are made, the District cannot withdraw immediately and will be obligated under the JPA to make any financial contribution it had committed to make. Thereafter, the District could still withdraw, but only with prior notice to the Authority and not until the end of the fiscal year during which it decides to withdraw. Finally, it should be noted that a decision to withdraw from the Authority will, pursuant to SGMA, require the District to prepare, fund, and implement a GSP for the portion of the basin within its boundaries. That GSP would also need to be coordinated with other GSPs prepared by other GSAs for the basin.

EXHIBIT

Authority Voting Structure

Interested Parties

Ag businesses, DACs, Env'tl Orgs,
Domestic well owner groups, Env'tl
users, feds, MWCs, non-ag businesses
with wells, public water systems,
state agencies, tribes, others

Up To 4 Total Votes

Associate Members

LADWP - 4 votes
Federal Agencies - 2 votes
4 Tribes - 2 votes each
3 MWCs - 2 votes each

**Up To 20
Total Votes**

Members

Votes - 2, 4 or More

Inyo, Mono,* Bishop, TVGMD,*
Wheeler Crest CSD,* Big Pine CSD,
Eastern Sierra CSD, Indian Creek-
Westridge CSD, Lone Pine CSD, Keeler
CSD, Sierra Highlands CSD, Sierra North
CSD, Starlite CSD

**Possibly More Than
52 Total Votes**