



California State University, Sacramento Center for Collaborative Policy

WHITE PAPER - Local Implementing Agencies - A Localized Governance Alternative for the Sustainable Groundwater Management Act

ABSTRACT

The Sustainable Groundwater Management Act of 2014 (SGMA) defines Groundwater Sustainability Agencies (GSAs) as the primary form of governance to be created by one or more existing local agencies in a groundwater basin. SGMA does not account for a local agency's capacity and willingness to fill the GSA role, nor does SGMA recognize the potential capacity of a local agency to implement provisions of a Groundwater Sustainability Plan without having to be a GSA. This paper describes an alternative and complementary governance structure to be employed by groundwater basins complying with SGMA. It provides the rationale to create "Local Implementing Agencies" (LIAs) and presents examples of how LIAs can be employed.

BACKGROUND

With the exception of fifteen existing agencies created by statute to manage groundwater [§10723(c)], the Sustainable Groundwater Management Act (SGMA) of 2014 (as amended 2015), requires the establishment of Groundwater Sustainability Agencies (GSA) to implement SGMA in high and medium priority groundwater basins. Groundwater basin priority is defined by the California Department of Water Resources (DWR) California Statewide Groundwater Elevation Monitoring program. The basins are memorialized in DWR's "California's Groundwater: Bulletin 118" series.

SGMA defines a local agency as "a local public agency that has water supply, water management, or land use responsibilities within a groundwater basin" [§10721]. GSAs can be formed by a local agency, or a combination of local agencies overlying a groundwater basin and electing to become a GSA within their respective basin (through a legal agreement such as a Joint Powers Agreement [JPA] or Memorandum of Understanding). SGMA does not address the ability of a local agency to be a GSA. Any agency meeting the definition above is therefore eligible regardless of whether it is prepared or desires to form a GSA. All GSAs must be formed by June 30, 2017 [§10735.2(a)(1)]. GSAs are subsequently responsible to prepare and implement Groundwater Sustainability Plans (GSPs) by January 1, 2020 [§10720.7(a)(1)] (for critically-overdrafted basins), and to achieve groundwater sustainability goals defined in their respective GSPs by January 1, 2040 [§10727.2(3)(A)].¹

As SGMA continues its second year of implementation, many local agencies grapple with whether to form an individual GSA or participate in a partnered GSA. Some local agencies are concerned that their interests can only be protected if they form or are part of a GSA. Within most basins the size, resources and capacities of eligible GSAs are diverse, ranging from those fully capable to support GSA formation, to agencies that, while eligible, are not prepared nor interested to lead SGMA governance. The responsibilities, powers and authorities of a GSA are

¹¹ GSAs within high or medium priority basins that are not identified as critically overdraft are responsible for preparing and implementing GSPs by January 31, 2022 [§10720.7(b)].

potentially large and, in many locations throughout the State, require significant resources to conduct. Many local agencies question how their interests are served by being a GSA.

The California State University, Sacramento, Center for Collaborative Policy (Center) has worked with DWR and the State Water Resources Control Board (SWRCB) on statewide and local SGMA implementation since the fall of 2014. The Center designed and facilitated over a dozen in-person and web-based public education events for DWR and SWRCB about general SGMA information, basin boundary modification regulations, and GSP regulations. In this capacity, the Center has worked with hundreds of stakeholders seeking information and working to understand SGMA's impacts. Similarly, the Center works with many groundwater basins throughout the State, in locations ranging from San Diego County in the south, to Shasta County in the north, and coastal areas such as Santa Maria and Soquel-Aptos. Notwithstanding inherent differences among hundreds of local agencies associated with these basins, throughout this diverse range common perspectives and interests have emerged as said agencies struggle with questions about their role in GSA formation and governance.

Most prevalent amongst these questions are basic topics of what a local agency seeks to achieve and avoid from SGMA implementation and whether these interests are addressed by being a GSA.

Agencies and their constituents generally seek to achieve:

- Groundwater sustainability for themselves.
- Groundwater sustainability for neighboring water users but not at the expense of their self-interest.
- Equitable and proportionate impacts to their users / uses when compared to impacts to other water users in their basin.
- Local control to implement SGMA.
- Financial stability and economic prosperity.
- Methods to protect the interests of their constituents and organizations.

Similarly, these agencies and their constituents commonly seek to avoid:

- Unsustainable financial burdens associated with SGMA.
- Disproportionate influence and governance methods that leave them at risk from decisions by others.
- Enforcement of their water use by people and agencies unassociated with them.

In this context, a conundrum emerges from SGMA implementation. SGMA defines only one governance structure for compliance – the GSA. This has created the perception, if not reality, that SGMA governance is an “all or nothing” proposition. Either an agency incurs the impacts and responsibilities to become a GSA, or it perceives itself excluded from participation in SGMA decision-making and from guiding the actions that most directly affect its interests.

There is currently a perception among many local agencies that the GSA is the sole vehicle through which SGMA can be implemented. Many basins have numerous eligible GSAs. Accordingly, many agencies believe that SGMA implementation will require either: 1) a JPA or similar structure with an unwieldy number of member agencies, or 2) a multitude of GSAs, each consisting of either an individual agency or a small number of partnered agencies, and each with identical and overlapping SGMA responsibilities for outreach, stakeholder engagement, data development, and intensive groundwater planning.

This paper proposes that SGMA implementation is best served by an intermediate level of governance; one that exists within the limits and allowances of the statute, and serves the interests described above.

CONCEPT PROPOSAL

We propose that SGMA implementation is best served by establishing within GSAs, “Local Implementing Agencies (LIAs).” An LIA will employ the statutory definition of “local agency” to function as a localized, intermediate layer of governance within a GSA structure.

In the spirit of the phrase, “think globally and act locally,” a GSP serves as the “global” instrument that parties collectively develop and support. The GSA serves as the overriding authority that conducts policy and oversight and ensures GSP compliance and basin sustainability. The LIA becomes the vehicle through which SGMA is implemented at the most localized level possible. The LIA is a GSA-eligible local agency that does not have the resources to form an individual GSA or support the administration of a multi-agency GSA, yet still retains the implementation roles of SGMA and has nexus responsibilities with the overarching GSA.

In practice, an LIA could function as follows. An initial collaborative governance structure will be created for a multi-agency GSA. In this structure, some local agencies will opt to participate at the “policy” level. We presume these agencies have the resources and interest to support the formation and administration of the GSA. They may have representatives that serve on the GSA decision-making board (or similar leadership structure), and said representatives will take on the policy and administrative responsibilities for the GSA (e.g. decision-making on fee assessment, enforcement, extraction measurement, capital improvement projects, etc.).

As required in SGMA, the GSA will prepare a GSP. All local agencies, regardless of whether they are noticed GSAs with the State and regardless of whether they serve the policy and administrative functions of the GSA, will have an active role preparing the GSP (if they choose to do so). As per SGMA, any local agency that chooses not to participate in a GSA and GSP process will be represented by their respective county.

Through locally-determined methods, each agency willing and able to participate in the GSP process will have a “voice” so that it can represent its local interests. The distribution of proportional authorities and “votes” will be a local decision and will be memorialized in the respective GSA’s governance documents.

Once completed, the GSP will presumably identify a range of actions to be taken in a basin to achieve sustainable groundwater conditions. Under the LIA concept, these actions will be delegated for implementation at the most local level feasible. A LIA will hold that formal implementation responsibility. For example, a LIA could be responsible for extraction monitoring and reporting to the GSA. It could be initially responsible for intervention if a groundwater user’s extraction practices exceed targets prescribed for a given water year condition and/or a given geographic area of the basin. The LIA could propose district-scale system improvements that could then influence how it achieves actions prescribed in the GSP in the future and how it is held accountable to address sustainability criteria. In all of these examples, the theme is that implementation is done by a local agency and minimizes intervention from afar. The GSA sets policy decisions (as informed by the LIAs) and intervenes only if a LIA proves incapable to achieve its responsibilities.

After the initial negotiation and development of a GSP, LIAs will assume the responsibility to implement the requirements of the plan that are attributed to them. It is assumed that throughout the planning horizon of a GSP, different water year and groundwater basin conditions will necessitate different management actions. In this context, a LIA assumes the responsibility (through some form of agreement within the GSA) to be responsible to implement their portion of these actions under the variable conditions. A LIA will self-govern and will be the first line of responsibility to ensure that fees are paid, and planning actions (as prescribed in the GSP) are taken by all constituent members. LIA leadership (presumed to be identical to the existing leadership of the

respective local agency) will have the initial responsibility to ensure that GSP requirements are met. In a circumstance where a constituent in a LIA does not comply with GSP requirements and is not responsive to LIA leadership directions, the condition is elevated to the overarching GSA leadership to be addressed.

EXAMPLES

The following presents examples of how the LIA concept can be implemented (see Figures, 1, 2, and 3 at the end of this paper). These examples are not exhaustive and are not to be interpreted as the only methods to use the LIA approach.

Example 1

Figure 1 presents a hypothetical situation in a basin where three GSAs have formed:

- GSA 1 is a single-agency GSA.
- GSA 2 is composed of a city that has invited a Mutual Water Company to participate in a joint-agency GSA.
- GSA 3 is a multi-agency GSA that includes seven local agencies, three of which are LIAs.

In this example, GSA 3 includes four agencies (a water district, a city, an irrigation district, and a county) that have collectively agreed to take on the administration and policy roles for the GSA. These agencies have a responsibility to implement SGMA for their respective service areas. Also in this GSA are three agencies that do not have the resources and/or interest to take on a policy role for the GSA. These agencies have defined service boundaries and are capable of implementing SGMA at their local level. These are therefore LIAs. Six of the seven agencies work together to prepare the GSP. Of the three LIAs, Agency 3 (shown connected to the GSP with a dashed line) does not have the resources to be involved in developing the GSP but will still implement the outcomes.

Example 2

Of note for the LIA concept is language in the Final GSP Regulations wherein under Article 2, Definitions §351, and Article 5, Subarticle 2, §354.10, the regulations describe “Management Areas.”

Management Areas are envisioned to allow a GSA to “*define one or more management areas within a basin if the Agency has determined that subdivision into management areas will facilitate implementation of the Plan.*” Further, a management area is defined as “*an area within a basin for which the Plan may identify different minimum thresholds, measurable objectives, monitoring, or projects and management actions based on differences in water use sector, water source type, geology, aquifer characteristics, or other factors.*”

Management Areas may have different minimum thresholds and be operated to different measurable objectives than the basin at large, with the understanding that the goal of the GSP is to achieve sustainable management for the entire basin by the target date and that operation to different standards within a Management Area shall not produce undesirable results elsewhere. A limitation of the Management Area concept is that it principally focuses on physical and geospatial conditions of an area within a basin. It does not specifically address governance nor is the Management Area specifically defined as a governance tool. In this context, [Figure 2](#) illustrates hypothetical options for how LIAs could be geographically defined to either match their existing service area boundaries, or as collections of agencies within a Management Area of a basin.

Figure 2 shows a county that includes three Management Areas:

- **Management Area 1 (blue)** includes a city, a water district, and a large area of unincorporated land under the county’s SGMA responsibility.

- **Management Area 2 (red)** is unincorporated land under the county’s SGMA responsibility.
- **Management Area 3 (green)** includes an irrigation district, a mutual water company, and small fringe areas of unincorporated land under the county’s SGMA responsibility.

In Example 1 (E1) of the figure, Management Area 1 could be a single LIA comprising the three agencies (city, water district, and county), or a collection of three LIAs within the single Management Area. To avoid vague boundaries and/or small fringe areas of county jurisdiction, the Management Area boundary has been “snapped” to match the same boundaries of the agencies.

In Example 2 (E2) of the figure, Management Area 2 could be a single LIA comprising the three agencies (irrigation district, mutual water company, and county), or a collection of two LIAs within the single Management Area (the mutual water company would have to be invited to partner with the county or irrigation district). To match geophysical conditions such as slope contours and/or hydrogeology, the Management Area boundary has been maintained and not “snapped” to match the same boundaries of the agencies. In this circumstance, the small fringe areas under county jurisdiction would stay as such or could be managed through mutual agreements between the county and the adjacent districts. As shown in the figure, Management Area 2 would be treated as a LIA solely managed by the county.

Example 3

Figure 3 presents a governance structure that merges the LIA Concept with Management Areas. In this example (different from Figure 1), the GSA is led by a collection of three Management Areas plus other eligible agencies. Oval 1 in the figure shows that the Management Areas serve the role that would be played by individual agencies in other multi-agency GSAs. The GSA governance agreement would describe who represents each Management Area on a GSA Board (or similar), how long they may serve, how they are chosen, and other operating considerations for the governance structure.

In addition to this policy level representation, the Management Areas create their own governance structure to represent the LIAs and other stakeholders that make up their respective area. To ensure a transparent and engaged approach (as required in SGMA), the Management Areas in this example have created “Committees.” These committees would be expected to meet periodically, to ensure discussions about SGMA implementation take place publicly, and to ensure that interested parties (including LIAs and all other stakeholders) are engaged and can inform decision making at the Management Area and GSA level.

CLOSING

The LIA concept provides a necessary, additional level of governance that acknowledges local agency interests and concerns about SGMA implementation. It validates the capacity of an existing local agency to be trusted, self-governing, and responsible to achieve SGMA goals. It enhances the likelihood of fewer rather than more GSAs in any given basin, thus minimizing administrative overlaps and reducing the overall costs of SGMA implementation at the basin and statewide scale. It provides all appropriate basins with a governance model that is consistent with the limits of the statute and supports SGMA’s fundamental principle of local control and flexibility.

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Figure 1 – Multi-GSA Governance

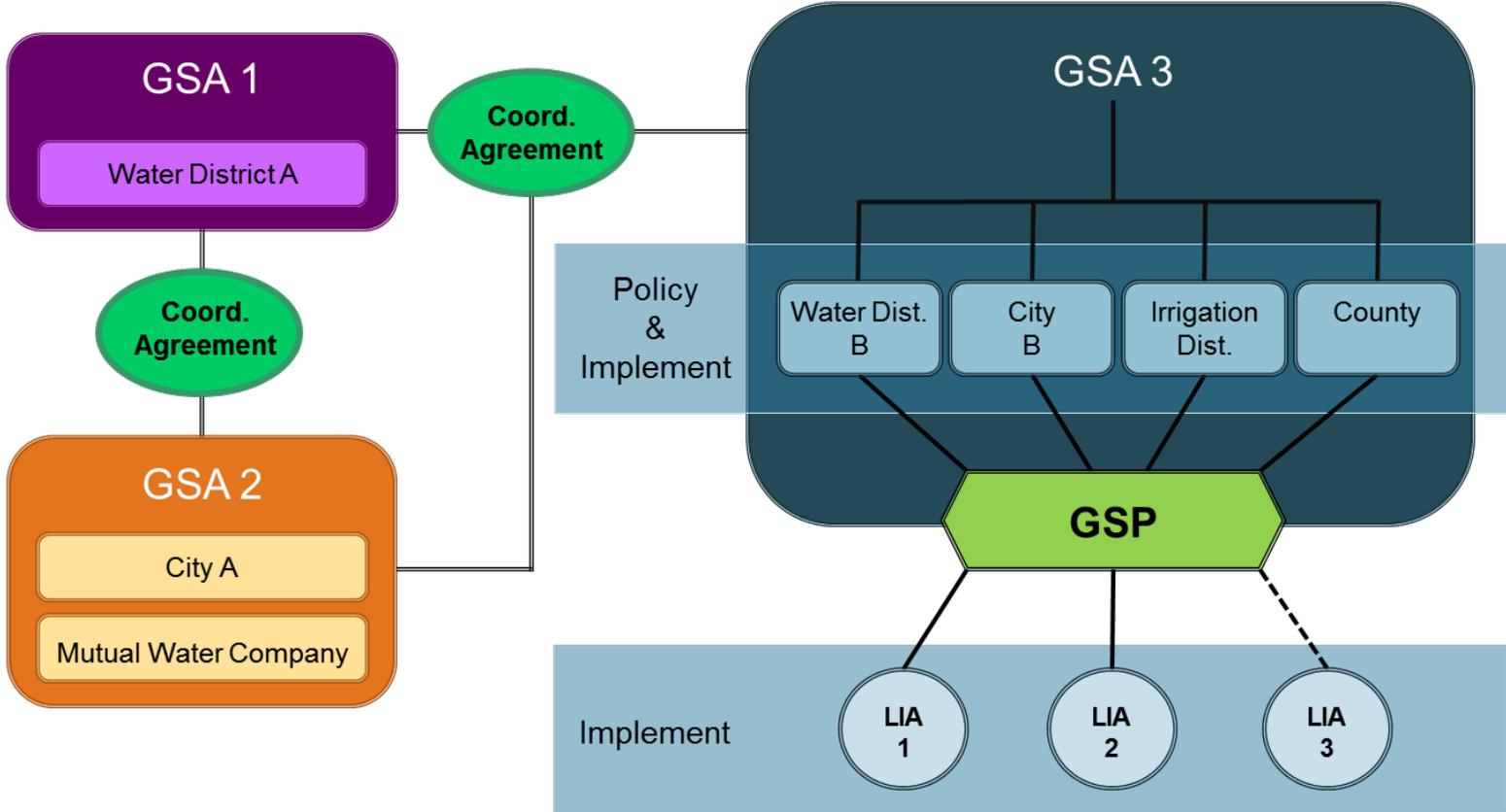


Figure 2 – LIAs and Management Areas

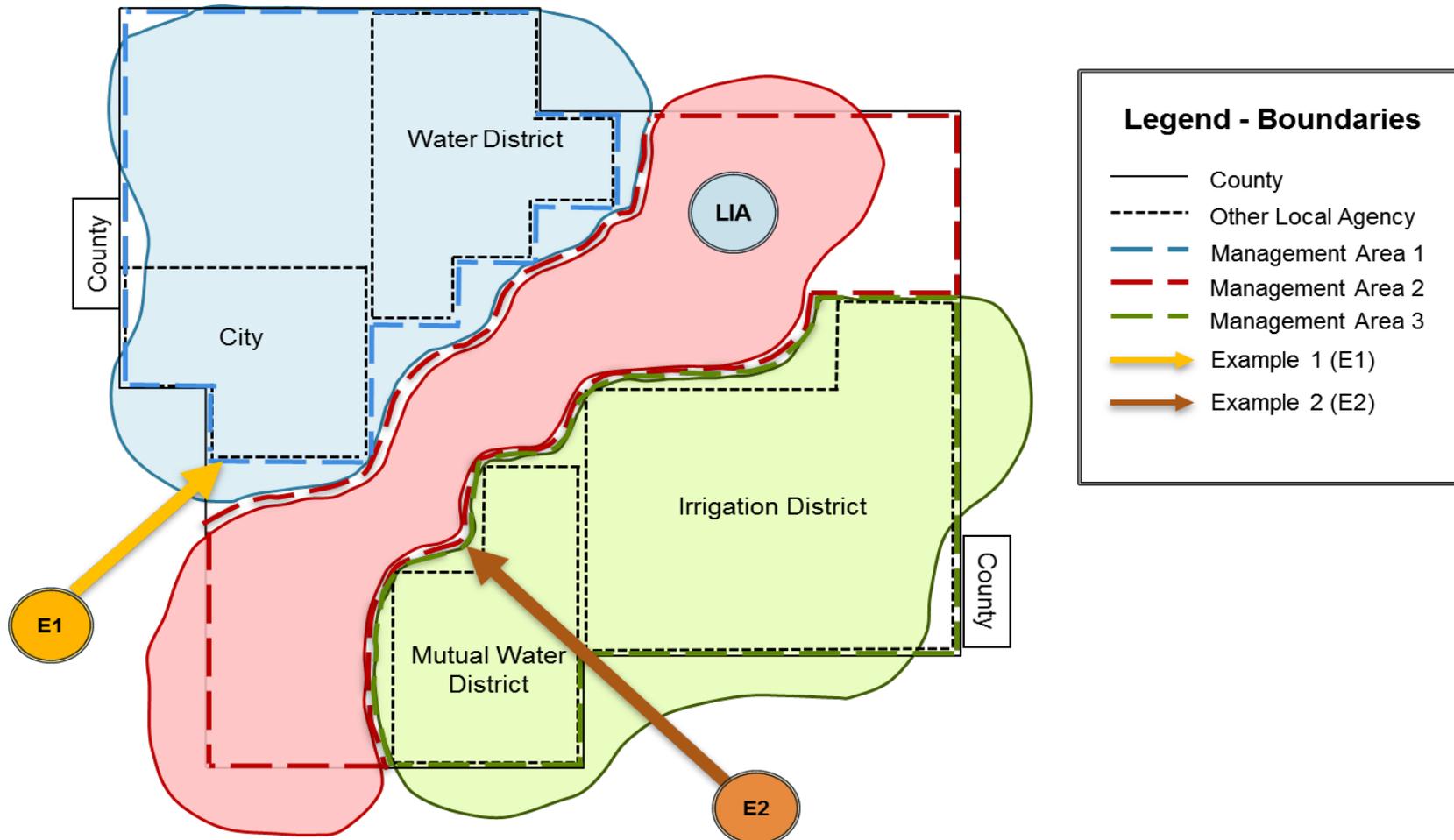


Figure 3 – LIA/Management Area Organization

