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Public Comment for MGA Board Agenda Item #5.5 Amendments to JPA Governance Documents and Agency Staffing

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To: MidCounty Groundwater Agency Board <comment@midcountygroundwater.org>

Cc: "Peisch Amanda@DWR" <amanda.peisch@water.ca.gov>, Trent Sherman <trent.sherman@water.ca.gov>, Becky Steinbruner <ki6tkb@yahoo.com>

Dear MidCounty Groundwater Agency Board of Directors,

I have read the proposed amendments to the MGA Articles and By-Laws, proposed in Item #5.5 on the March 18, 2021 Board agenda, and have the following comments and suggestions:

1) Article I

There needs to be definition of "Private Well Owner" to make it clear that this group also includes small water companies, mutuels and single private well owners. Current language does not include any such definition.

2) Article 2.3

In my opinion, the Principal Office needs to be a more neutral agency, such as the County of Santa Cruz, not Soquel Creek Water District. This would improve trust among all constituents in the Basin, and would support a sense that there is neutrality in the management of the Basin. Quite frankly, many private well owners do not trust Soquel Creek Water District, and the MGA needs to recognize and respect that sentiment. Designating the County Water Resources Management Office as the "Principal Office" for the MidCounty Groundwater Agency would best address and support neutrality.

3) Article 6.1.2

I am glad to see that three Private Well Owner representatives are included and better defined as actual Board members. Does this mean they will have full voting rights, just as other Board members have enjoyed?

4) Article 6.3.5

The Private Well Owner representatives and the Alternate(s) should be chosen by those they represent, not appointed by the Agency Board. The Santa Margarita Groundwater Agency Private Well Owners did this, and the result is a sense of better transparency and public involvement. PLEASE AMEND THIS ARTICLE TO ALLOW PRIVATE WELL OWNERS TO SELECT THEIR OWN REPRESENTATIVES AND ALTERNATES.

5) Article 6.4

As stated, there is only one Alternate allowed for the sum of three Private Well Owner representatives. I request that this be changed to include a total of two Alternates, to provide for the possibility of multiple absences of Private Well Owners at meetings or participating in Ad Hoc Committee assignments that affect their constituents.

6) Article 6.6.2

There should be two Alternate Private Well Owner Directors to serve as back-up to fill vacancies and all vacancies should be filled with the approval of the Private Well Owners themselves, not appointed by the Agencies.

7) Article 7.2.2

This needs to be amended to include term limits on elected officers. Officers should not serve more than two consecutive terms in any office. This will promote fresh ideas and energy, and not allow the Board to become stale and unresponsive. This will promote a better sense of trust with the public.

8) Article 7.3

The Treasurer needs to be a neutral third party independent contractor, or the County Auditor-Controller. I protest that this office has been held by the Director of Finance for Soquel Creek Water District, and strongly feel this needs to change. Having an independent contractor handling finances would better promote transparency and trust with the public. Government Code 6505, cited in Article 7.3, allows for an independent contractor to assume this office:

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- (a) The agreement shall provide for strict accountability of all funds and report of all receipts and disbursements.
- (b) In addition, and provided a separate agency or entity is created, the public officer performing the functions of auditor or controller as determined pursuant to [Section 6505.5](#) , shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every agency or entity, except that the officer need not make or contract for the audit in any case where an annual audit of the accounts and records of the agency or entity by a certified public accountant or public accountant is otherwise made by any agency of the state or the United States only as to those accounts and records which are directly subject to such a federal or state audit. In each case the minimum requirements of the audit shall be those prescribed by the Controller for special districts under [Section 26909](#) and shall conform to generally accepted auditing standards.
- (c) When an audit of an account and records is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each of the contracting parties to the agreement and also with the county auditor of the county where the home office of the joint powers authority is located and shall be sent to any public agency or person in California that submits a written request to the joint powers authority. The report shall be filed within 12 months of the end of the fiscal year or years under examination.
- (d) When a nonprofit corporation is designated by the agreement to administer or execute the agreement and no public officer is required to perform the functions of auditor or controller as determined pursuant to [Section 6505.5](#) , an audit of the accounts and records of the agreement shall be made at least once each year by a certified public accountant or public accountant, and a report thereof shall be filed as a public record with each of the contracting parties to the agreement and with the county auditor of the county where the home office of the joint powers authority is located, and shall be sent to any public agency or person in California that submits a written request to the joint powers authority. These reports shall be filed within 12 months after the end of the fiscal year or years under examination.
- (e) Any costs of the audit, including contracts with, or employment of certified public accountants or public accountants, in making an audit pursuant to this section shall be borne by the agency or entity and shall be a charge against any unencumbered funds of the agency or entity available for the purpose.
- (f) All agencies or entities may, by unanimous request of the governing body thereof, replace the annual special audit with an audit covering a two-year period.
- (g) Notwithstanding the foregoing provisions of this section to the contrary, agencies or entities shall be exempt from the requirement of an annual audit if the financial statements are audited

by the Controller to satisfy federal audit requirements.

<https://codes.findlaw.com/ca/government-code/gov-sect-6505.html>

9) Article 9

The Article needs to clarify whether or not Private Well Owner Representatives will be allowed to vote. I strongly feel they should be allowed to vote on all matters described, given fee assessments are likely for non-diminimus pumpers in the near future.

10) Article 17.2

I feel it must be made clear in this Article that each Board member and their Alternate shall be provided with a dedicated e-mail address for the MidCounty Groundwater Agency business and correspondence. This is critical for all Board members, but especially those who may not be paid staff members of the Member Agencies.

*****BY-LAWS*****

11) ARTICLE 1.2

I strongly disagree with Soquel Creek Water District serving as the Principal Office of the Agency. I request that the Board designate the County of Santa Cruz Water Resources Office within the Environmental Health Department as the Principal Office. This will promote trust among the public and preserve a sense of neutrality in management of Agency liaison to the public.

12) ARTICLE 1.4

I strongly urge the Board to appoint the County of Santa Cruz Water Resources Office within the County Environmental Health Department as the "Parent Agency". Once again, this will provide an improved sense of transparency to the public, and comfort the public that the MGA is not just a puppet for furthering the wants of Soquel Creek Water District to best serve their own interests. The current proposed language below gives no assurance of neutrality going forward with the MGA at all:

1.4 PARENT AGENCY. Unless and until the Agency adopts its own administrative, management and operations policies and procedures, the administration, management and operation of the Agency shall be in accordance with existing applicable policies and procedures of the Soquel Creek Water District ("Parent Agency").

13) ARTICLE 2.2

I feel the Procedure for Directors Representing Private Well Owners must be amended to allow the Private Well Owners themselves to select who represents them. This has been very successfully accomplished on the Santa Margarita Groundwater Agency Board, and the MidCounty Groundwater Agency Board needs to follow this good example. The current process described in By-Laws Article 2.2 allows the Member Agency Board to filter and carefully select for their own purposes whether an applicant is allowed on the Board. This is unfair to the Private Well Owners, and must be changed.

14) ARTICLE 2.2.4

The "Screening Committee" should be amended to be composed solely of the Private Well Owners themselves, and include no representatives of Member Agencies.

15) ARTICLE 2.2.5

Nominations should come from Private Well Owners, not sub-committee of the Member Agency Board.

16) ARTICLE 2.2.6

Appointment of the Private Well Owner representatives and their Alternate(s) should be made by the Private Well Owners themselves, not by the Member Agencies Directors.

17) ARTICLE 2.2.7

This proposed change to the By-Laws allows the Member Agencies Board members complete control over who they want to have on the Board to represent the Private Well Owners, allowing the Board to devise an alternate method if they choose. This could potentially eliminate any semblance of involvement by the Private Well Owners themselves, and allow the Member Agencies to simply pick someone they want that would support their goals and not question things.

As such, the proposed language below is somewhat alarming, and must be amended to allow those Private Well Owners who will be affected by policies and operations of the MGA in the future to have a meaningful way to choose those who represent them.

*2.2.75 Term. The term of appointment shall be four (4) years, unless otherwise established by a majority vote of the Member Agency Directors, and such term shall continue until a successor is duly appointed by the Board. The term effective date shall be determined by resolution of the Board. At the expiration of the term of a PWO Director or Alternate, the Board may (i) elect to initiate the appointment procedure for a PWO Director or Alternate under section 2.2 of the Bylaws; or (ii) **appoint a PWO Director or Alternate in an different manner, subject to Board approval by a majority vote of the Member Agency Directors participating in voting.** For the purpose of establishing staggered terms, one of the initially-appointed PWO Directors and the Alternate Director will serve an initial term of two years. The three PWO Directors may determine by unanimous decision which Director will serve the initial term of two years; if they are unable to reach a unanimous decision, then as observed by the Board Chair or Vice-Chair they shall devise a random selection process through which a PWO Director will be chosen to serve the initial two-year term.*

18) It is not specified whether or not the Private Well Owner Representatives and their Alternate(s) would be able to have voting rights in any MGA actions.

19) ARTICLE 3.5

I feel that Robert's Rules of Order should be used, rather than Rosenberg's Rules of Order.

Under the later, the Chairman can force the Board to proceed with a vote, even though a motion has not gained a second.

Sixth, the Chair should determined if any member of the body wishes to second the motion. The Chair should announce the name of the member of the body who seconds the motion. (It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the Chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the Chair.)

As noted, the Chair has every right as a member of the body to make a motion, but should normally do so only if the Chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

http://www.chamberorganizer.com/easternplumaschamber/docs/Rosenbergs_Rules_of_Order.pdf

The issues I want to make clear with the Rosenberg's Rules of Order is that the Chairman is normally encouraged to promote all Board members to participate in discussion and to be the last to speak. However, the Rosenberg's Rules of Order allow the Chairman to make a motion, and to proceed to vote on it without a second. I do not feel this promotes fair and equal representation for all.

20) ARTICLE 4.7.1

I strongly disagree in naming the Finance Director of Soquel Creek Water District as the Treasurer. This Member Agency is the largest contributing agency to the MGA funding, and I feel it is a conflict of interest to have that Member Agency effectively controlling the finances.

As currently written and proposed for amendments, the MGA Articles and By-Laws appear to allow the Soquel Creek Water District the full reign of administration, management, operation and also financial control of the MidCounty Groundwater Agency. This simply looks and feels inappropriate and seemingly has Soquel Creek Water District running the entire Basin management. That makes me and many others very uncomfortable, with zero trust in the District to do anything that would not serve their own interests at the expense of other Member Agencies, especially Private Well Owners.

I request that the MGA instead use an independent certified accounting agent to maintain a sense of transparent and neutral handling of the MGA finances. This will promote a better sense of trust with the public. Although proposed language in Article 4.7.2 (iv) would require an independent auditor to review Soquel Creek Water District's Financial Manager's work, I feel it would be far superior to have an independent certified public accountant who is completely neutral to be the Treasurer, and also have an independent audit of those records.

21) ARTICLE 5.1

Please explain exactly what this proposed new statement means, and how it would be enforced:

"No committee or participant on such committee shall have any authority to act on behalf of the Agency except as duly authorized by the Board."

22) ARTICLE 5.2

It is not clear whether or not "Directors" includes the Private Well Owner Representative Directors. In the Board's March 18, 2021 Agenda Item #5.4, (page 95) seems to make an exception in having the Private Well Owner Directors be involved in the proposed Ad Hoc Committee regarding developing an RFP for a consultant to develop a non-diminimus pumper metering program:

"Staff want to recognize that Board members are not typically included in contracts of this size to the degree of engagement outlined in this memo. However, in this case the Private Well Owner (PWO) representatives have expressed particularly interest in this issue and have previously engaged with staff to frame the program as written in the GSP. Staff also recognize the particular importance of the engaging the PWO representatives on this issue from the perspective of the parties that will be subject to the new program, and believe their engagement will support the successful implementation of the program."

23) ARTICLE 6.1.2.3

This proposed new language to reimburse Soquel Creek Water District for in-kind Finance Director work is reason to support an amended requirement that the MGA Treasurer is an independent third-party certified public accountant, because the MGA is financially supporting the District's Finance Director for doing this job. Please amend the Article to require that the MGA fund an independent third party certified public accountant and auditor in order to promote public trust and transparency.

The proposed amendment to the By-Laws is not acceptable, and promotes the superior influence of Soquel Creek Water District in all aspects of the MGA, harming public trust:

"6.1.2.3 Reimbursable Contribution of Treasurer and Finance Staff. The Agency will reimburse the Member Agency of the appointed Treasurer and auditor for their services and related services of finance staff in support of the Agency. Reimbursement will include necessary staff time for these roles as well as the purchase and maintenance of any necessary materials and/or equipment required by the Treasurer in order to complete the work."

24) ARTICLE 6.1.4

This is very vague and does not merit approval as an Amendment to the By-Laws as such. I respectfully request that the language below be omitted until the Executive Committee develops and refines further, more specific policy.

"6.1.4 Administrative Support Staff. The Executive Staff will recommend to the Board an approach to acquire and maintain administrative staff support to perform the administrative tasks necessary for the business and operations of the Agency."

25) ARTICLE 7.1

I request that there be additional language to include "but no two members of a single Member Agency".

26) ARTICLE 9.2

As written, this is vague and does not include language to describe what the Records Retention Policy actually is. This could be improved upon to provide better transparency if the policy of Records Retention were included or provided in an attachment. Because I attended that May 18, 2017 meeting, I recall a great deal of discussion, and in fact hesitation that the proposed Soquel Creek Water District Records Retention Policy presented for adoption needed to be reviewed by legal counsel.

"9.2 RECORDS RETENTION POLICY AND SCHEDULE. On May 18, 2017, By June 30, 2017 the Board will review and adopted a Records Retention Policy and Schedule that specifies the retention period of different categories of materials. Implementation of this Policy will be the responsibility of Agency staff."

There is no information provided in the Minutes of the May 18, 2017 Board meeting for this action:

"4.3 Adopt Records Retention Policy and Schedule Mr. Baskin asked if the policy from Soquel Creek Water District had been reviewed by legal counsel since August 2014. Ms. Menard replied that it had not. Mr. Baskin requested that the policy be reviewed by counsel, and moved that the group conditionally adopt the policy. If any changes need to be made, it can be updated at the next board meeting."

"MOTION: Mr. Baskin; Second: Ms. Mathews. To adopt the Records Retention Policy conditionally, and update at the July board meeting per legal counsel's review. Motion passed unanimously. "

<https://www.midcountygroundwater.org/sites/default/files/uploads/meetings/minutes/Final%20Meeting%20Minutes%202017-0518.pdf>

At the following Board meeting on July 17, 2017, Mr. Carson provided a report but no information is included to describe what the MGA Records Retention Policy actually is:

"6.6 Staff Reports Mr. Carson provided an update on the records retention policy. County counsel has reviewed it. Since the legislative code for special districts is different than for JPAs, the board is opting to create a records retention policy. It is not required."

<https://www.midcountygroundwater.org/sites/default/files/uploads/meetings/minutes/Final%20Minutes%202017-0720.pdf>

27) Why are the 10 pages of the November 15, 2018 MGA Board meeting agenda item #5.1 staff report provided as part of the proposed Amendments to Governance Documents? The item regarded guidance to the Board and the then-Advisory Committee about the role of the MGA in Member Agency construction projects, but without the action taken by the Board at that time.

Does this mean the Board will reconsider ARTICLE 12 at some unknown time, and determine what degree the MGA Member Agencies would financially support an individual project by an individual Member Agency? The initial MGA Board did agree that the Agency would do no projects, per se. Is this now open for change, should large and expensive projects require outside financial support?

Here are the minutes of the November 15, 2018 Board meeting, with the action approved by the Board on that item:

"MOTION: Mr. Baskin; Second: Mr. Kennedy. To acknowledge the Board's current sense of the MGA's role as the basin-planning agency that could play a limited role in funding projects and/or management actions. Section 4.0 [Projects and Management Actions to Achieve Sustainability Goal] of the MGA's Groundwater Sustainability Plan will include, but not be limited to, all projects and management actions presented in Attachment B (Agenda Item 5.1.2, Working Draft Water Supply Augmentation Options for the Santa Cruz Mid-County Groundwater Basin). Section 5.0 [Plan Implementation] of the MGA's Groundwater Sustainability Plan will focus on those member agency programs and projects that are currently being implemented or are in development including, but not limited to, river water transfers, in lieu recharge, Pure Water Soquel, aquifer storage and recovery, and managed aquifer recharge. Motion approved unanimously. "

https://www.midcountygroundwater.org/sites/default/files/uploads/meetings/minutes/MGA_Board_Minutes_2018-1115_%20Final_0.pdf

THIS CONCLUDES MY COMMENT AND REQUESTS REGARDING THE PROPOSED AMENDMENTS TO THE GOVERNANCE DOCUMENTS AND AGENCY STAFFING. I feel the Board must focus on actions that will support better transparency, accountability, and public trust as teh MGA moves forward with policy-making and implementing the Groundwater Sustainability Plan.

I do have one question regarding public access to the MGA Executive Committee meetings. According to By-Law Article 5.1:

"Permanent Committees will be given a specific role and regardless of the number of Directors appointed shall be subject to compliance with the Brown Act."

Under the provisions of the Brown Act, the MGA Executive Committee is a permanent committee, and must provide 72-hour notice of their meetings, and make them available to the public. This has not been the case. Does the Executive Committee plan to change it's policies to comply with the Brown Act and in accordance with the MGA By-Laws? I would appreciate a written response to this question.

Thank you.

Sincerely,

Becky Steinbruner

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