

## Staff Report

**Date:** February 9, 2022, GWA Board

**Subject:** DWR Comments on the GSP and Plan to Respond

**Attachment:** DRAFT DWR Comment Response Process

### Summary

Several of the GSAs have proposed a plan to coordinate the GWA response to the DWR comments on the ESJ GSP. This would involve formation of an Ad Hoc Legal/Policy Committee to coordinate with the TAC to develop the GWA response. The roles, steps and preliminary schedule are described. Board action is needed to form the Ad Hoc. The Chair may then appoint the members per the Bylaws.

### Background/Discussion

Originally, DWR intended to provide informal comment on the GSP in August 2021. The DWR informal comments were received November 18, 2021. The official comments were received January 28, 2022, consistent with the statutory requirements. The formal and informal comments were not substantially different. DWR identified deficiencies and corrective actions, finding the ESJ GSP inadequate. The receipt of formal comments starts the 180-day response period which will end July 27, 2022.

At the December 2, 2021, TAC meeting, the TAC reviewed DWR informal comments and Woodard & Curran (WC) TO5 – which included \$25K to support preparation of GWA responses. The GWA budget has an additional \$25K to support the GWA Board in formulating its response. These budgeted funds can be assigned by the Secretary.

WC and staff prepared a preliminary Draft Response Matrix laying out the DWR comment, corrective action, a potential response. On January 6, 2022, the TAC received a preliminary Draft Response Matrix. On February 3, 2022, the TAC received and discussed the official DWR comments, the Draft Response Matrix, and were briefed on DWR meeting with other GSA with GSPs that were deemed inadequate. The Steering Committee at its December 8, 2021, meeting received the DWR official comments and authorized the Secretary to sign the WC Task order to support development of the GWA response.

Several GSAs have provided a *DRAFT DWR Comment Response Process (Attached)* and requested Board action to formalize the process, form an ad hoc committee, and develop a schedule to produce a final GWA response to DWR. The GWA would act prior to July 27, 2022, to adopt the response.

Per GWA JPA and bylaws, the GWA Board can form ad hoc committees and the Chair can make appointments. DWR has stated that it wants all GSAs involved in the response to comment, noting that they all are ultimately responsible; and further supports an open and transparent process.

### Board Action

At the meeting the Board is requested to consider:

1. Forming a DWR Comment Legal/Policy Ad Hoc Committee.
2. Expanding membership on the TAC to include additional GSA technical staff or consultants' representatives to formulate a draft response.

3. Establishing a DWR Coordination Team of TAC members to meet with DWR on their comments and address questions and issues.
4. Authorize the Secretary to allocate funds budgeted in the FY 21-22 GWA budget to the WC task order to support the preparation of the GWA response and coordinate needed work pursuant to DWR recommended corrective actions.

## DRAFT DWR Comment Response Process

### Action Requested:

Several GSAs request that the ESJGWA Board approve the following process in response to DWR's formal GSP Comments. GSAs recommend that the ESJGWA Board request the Chairman to form a (1) Legal/Policy DWR Comment Ad Hoc Group and (2) a reconfigured Technical Ad Hoc Group. Both groups will be charged with developing a Comment Response Road Map to address each of the issues raised in DWR's comment letter.

### Goal:

The following process is a milestone/deadline driven proposal for the ESJGWA Board's consideration with the goal of updating and revising the GSP to receive final approval by DWR.

### Considerations used Developing a Comment Response Process:

Is the process:

1. Inclusive of GSAs Input.
2. Addressing Policy Issues appropriately.
3. Producing technically sufficient responses.
4. Meeting all legal requirements.
5. Protecting confidentiality and legal position in litigation.
6. Efficient given numerous milestones/deadlines and significant budgetary constraints.

### Process Summary:

**Step 1: Assess Comments and develop Comment Responses Matrix and Road Map;**

**Step 2: Convene a DWR Comment Legal/Policy Ad Hoc group;**

**Step 3: Technical, Legal, Policy Issues are resolved in appropriate Ad Hoc Committees;**

**Step 4: Present Administrative Draft of GSP revisions;**

**Step 5: GSP Revisions are adopted and submitted to DWR**

### Description of Steps:

**Step 1:** Several GSAs recommend that the Chair form and convene the DWR Comment Legal/Policy Ad Hoc Committees to work with the reformulated and expanded TAC to scope with consultants how comments will be addressed i.e. (GSP edits, GSP addendum, needing further policy, technical, or legal deliberation, deferred to next GSP, refuted, and responded with comment letter). The work product coming out of this committee would be a compiled comment matrix that serves as a road map to be used in the development of a scope of work and budget for consultant help including identified issues requiring additional policy, technical and legal feedback. The Scope of Work should also include a detailed schedule of milestones/deadlines for meeting the 180-day timeline.

Desirable qualities for members of the expanded TAC – No quorum of the Board or standing committee, ability to make and keep time commitments (12-24 hours per month), veteran of original GSP development, preferably

staff with technical and/or legal background, well versed in SGMA requirements, and the ability to stay focused on the task at hand.

The GSAs are currently in litigation over the validity of the GSP. Therefore, all issues surrounding this issue are legally sensitive, and need to be dealt with the appropriate level of confidentiality. The GSAs recommend that all items on this issue to come to the Board be reviewed by legal counsel prior to placement on the agenda.

**Step 2:** Form and convene the DWR Comment Legal/Policy Ad Hoc group to identify 1) legal and policy issues to address related to DWR comments, and 2) legal issue related to the pending litigation regarding the GSP. The DWR Legal/Policy Ad Hoc Committee will closely coordinate with the TAC during development of technical responses and will advise the Steering Committee regarding legal questions and policy issues. Both the TAC and Legal/Policy will formulate questions to DWR, staff will coordinate meetings with DWR SGMO group to discuss the questions.

**Funding: The ESJGWA** Board has approved a partial allocation of funds budgeted for DWR comment responses and may need to take actions to fund additional consultant scope of work and budget as developed in Step 1.

**Step 3:** Policy, legal and technical issues identified in the Road Map and referred to the appropriate committee must be discussed and resolved on a timely basis in order for the group to meet its milestones and ultimately, the 180-day deadline. Additional ESJGWA meetings may be necessary including additional time and effort from individual Member GSAs. Member GSAs should be given advanced notice of time commitments, data requests, and needed Board/Council feedback or actions as early and often as possible. Member GSAs are asked to make timely responses and uphold commitments necessary to keep the comment response process on track.

**Step 4:** Consultant Team presents administrative draft of GSP revisions to GSAs. Similar to the GSP adoption process, the ESJGWA and its Member GSAs will need an opportunity to verify the any revisions prior to final submittal to DWR.

**Step 5:** GSP Revisions are adopted and submitted to DWR. The process for approval and submittal of GSP revisions needs to be researched in order to maintain a strict 180-day schedule. Member GSAs will need to know the process (if any) for Boards/Councils to approve, adopt, and submit a revised GSP.

#### **DRAFT Schedule** (may be revised upon committee direction)

GSAs have 180 days to respond to comments from the date formal DWR comments are received.

January 28: Day-0; Comments Received

Feb 9: Board requests that the Chair form a Legal/Policy DWR Comment Ad Hoc Committee and reconfigured Technical Ad Hoc Committee.

March 9: Present to the Board the Comment Response Road Map; recommend any new/revised Consultant Contracts/task orders.

May 11: Final ESJGWA Meeting to decide any remaining policy, legal, technical Issues

Late May: Receive Admin Draft of GSP Revisions

June 8: ESJGWA Approve GSP Revisions

July 13: Last ESJGWA meeting before 180-day deadline

July 27: Day 180; Submit Revised GSP by deadline