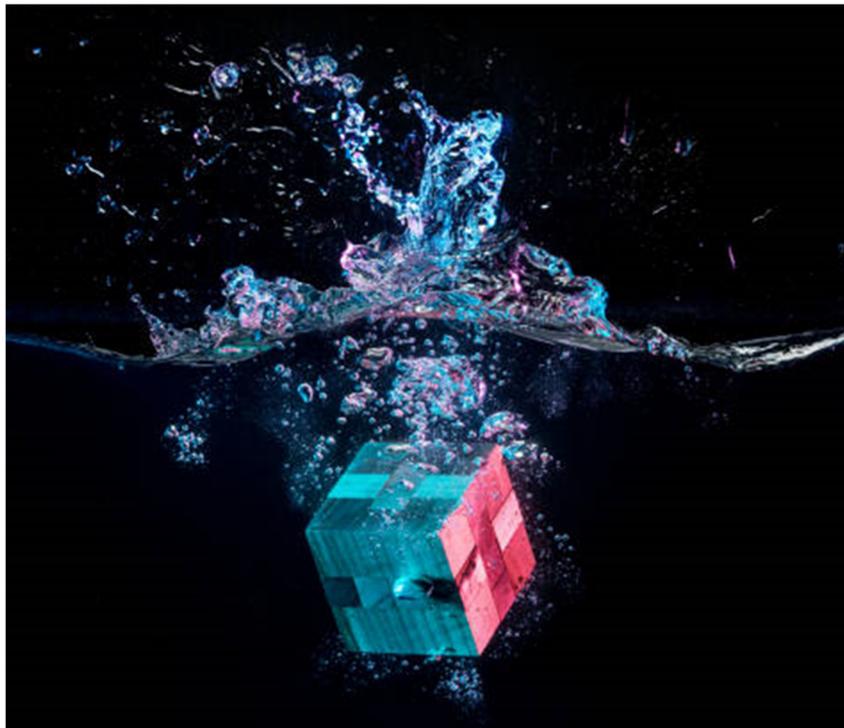


## 2022–2023 San Joaquin County Grand Jury



### The Eastern San Joaquin Groundwater Authority: A Rubik's Cube of Water Management Case #0622



#### Summary

Water has been a concern for all Californians since the earliest days of statehood. Years of severe drought are often followed by a superabundance of rain and snow that results in flooding. Both can be devastating, as has been the case recently in San Joaquin County. Because our State's water

supply is cyclical, the need for intelligent and efficient management of this crucial resource is vitally important for everyone.

Our water sources generally can be categorized as either surface water (rivers, creeks, lakes, etc.) or groundwater (water held in the soil or underground aquifers). In the early 1900s, the State government began authorizing the creation of water districts to manage groundwater, favoring local control of this resource. Due to decades-long declines in groundwater levels and water quality, in 2014 the State legislature adopted three bills that together are known as the Sustainable Groundwater Management Act (SGMA). SGMA requires the creation of Groundwater Sustainability Agencies (GSAs), which are tasked to develop and implement Groundwater Sustainability Plans (GSPs). GSPs describe how to avoid undesirable results and mitigate groundwater overdrafts in basins and subbasins identified as being in a state of critical overdraft by 2040. Our Eastern San Joaquin Subbasin is in critical overdraft.

In 2017, the 16 GSAs and local agencies responsible for managing the groundwater in the Eastern San Joaquin Subbasin joined together to form the Eastern San Joaquin Groundwater Authority (ESJGWA) to cooperatively carry out the purposes of SGMA. Having received a citizen's complaint and subsequently reviewing concerns about public outreach and engagement by the ESJGWA in the course of its work, and because of the significance of water issues to San Joaquin County residents, the 2022-2023 Grand Jury elected to undertake an investigation.

The Grand Jury conducted 12 interviews with the complainant, members of the ESJGWA Board of Directors (current and former), County staff, representatives of several stakeholder groups, and interested citizens. The State Department of Water Resources (DWR) staff, who have been meeting monthly and working directly with the ESJGWA, declined the Grand Jury's request for an interview. The Grand Jury also reviewed ESJGWA governance documents, meeting minutes, budgets, annual reports, initial and final GSPs, and public outreach materials; websites of the ESJGWA and its member GSAs; portions of the SGMA and related Department of Water Resources (DWR) requirements, California Water Code, and other relevant government codes; stakeholder correspondence; news media stories on groundwater in the Central Valley; and many other pertinent documents.

The Grand Jury concluded that while the ESJGWA has successfully developed and is currently implementing its GSP, concerns exist about inadequate public engagement, a lack of transparency in the conduct of its business, and administrative issues.

Although the ESJGWA developed an unadopted plan for public outreach and engagement and has contracted a consultant to develop a new plan, it currently has none. Outreach efforts to identify and engage members of disadvantaged communities and non-English speakers have been limited and unsuccessful. DWR and ESJGWA also have not developed a clear and consistent message to help the public understand the importance of SGMA and how groundwater shortages can impact their lives.

Important ESJGWA financial information is buried deep within the websites of the County Flood Control & Water Conservation District and the County Administrator's Office (CAO), making it nearly impossible for citizens to locate. The ESJGWA's website does not include information

required by several State laws, does not identify the members of the Board of Directors, minutes of public meetings are difficult to locate or missing, and financial information is absent.

Board and other public meetings are routinely held at inconvenient times for public participation, and repeated public requests that meeting times be changed have not been addressed. Possible Brown Act violations have occurred relating to the ESJGWA's Technical Advisory Committee (TAC).

The ESJGWA has inadequate staff support to function efficiently and effectively. This is evidenced by the year-long lapse of an important agreement between one of the member parties and the County, and by staff members' testimony.

To correct these deficiencies, the Grand Jury recommends the ESJGWA Board of Directors, County Board of Supervisors, and Auditor-Controller's Office take the following actions:

- Develop, adopt, and implement a plan to improve public communications and outreach.
- Reinstitute periodic outreach events to inform the public about the GSP and the status of its related implementing projects.
- Identify ways to better find and engage with members of disadvantaged communities (DACs), including non-English speakers, in the San Joaquin Subbasin.
- Update the website to provide easier, more comprehensible access to ESJGWA financial information.
- Update the Flood Control & Water Conservation District's website to provide convenient access to financial and project information related to the use of Zone 2 funds.
- Explain the differences between the fiscal year-end ESJGWA fund balance reports and the annual independent audit balance sheets.
- Update the website, [esjgroundwater.org](http://esjgroundwater.org), to ensure full compliance with the provisions of SB 929, SB 272, and Government Code Section 7405.
- Update the website and Board Bylaws to reflect the actual dates and times for Board meetings.
- Update the website to enable easier public access to meeting minutes.
- Identify the members of the Board on the website, meeting agendas, and official written documents.
- Consider ways to enable and promote increased public attendance at open meetings.
- Formalize the status of the TAC as a standing committee and bring it into compliance with the requirements of the Ralph M. Brown Act.
- Monitor the expiration dates for any relevant governance or contractual documents and GSP implementation deadlines to ensure the Board can act before any lapses occur.
- Ensure staff support is adequate for efficient, cost-effective operations.

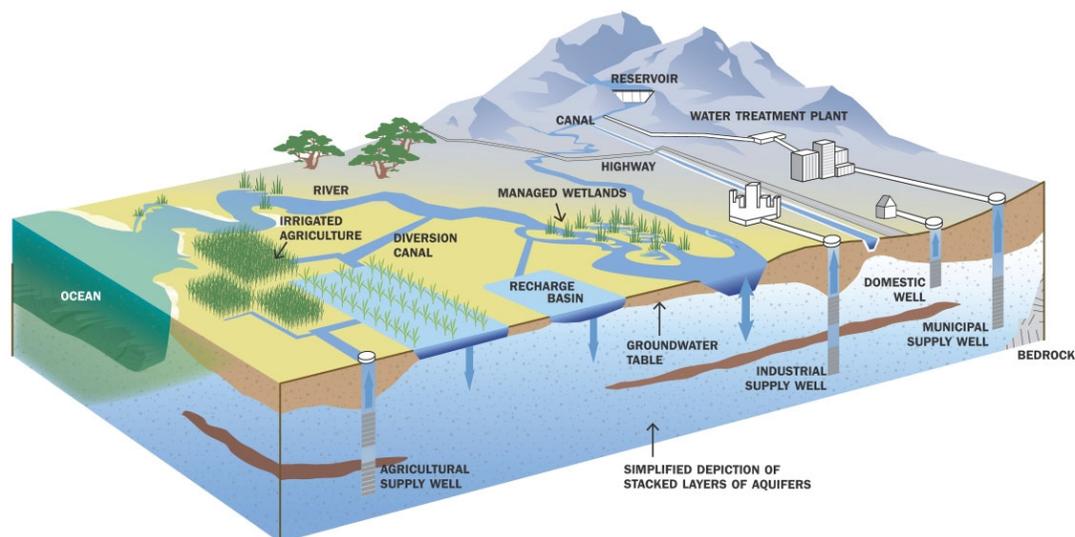
## Glossary

- **AB:** Assembly Bill.
- **Ad Hoc Committee:** A committee created for a particular purpose when necessary or as needed.
- **Basin:** An underground reserve of water.
- **CAO:** San Joaquin County Administrator's Office.
- **California Code of Regulations (CCR) 354.10(d)(3):** That part of the California Code of Regulations pertaining to notification and communication requirements for groundwater sustainability plans.
- **County Resolution R-15-17:** The Resolution whereby the County Board of Supervisors adopted the *2015 Strategic Plan to Meet Water Needs* and Zone No. 2 property-related fees.
- **Cal Water:** California Water Services Company.
- **CPRA:** California Public Records Act.
- **DAC:** Disadvantaged Community. A census designated area with an annual median household income (MHI) that is less than 80 percent of the Statewide annual MHI.
- **District:** San Joaquin County Flood Control & Water Conservation District.
- **DWR:** California Department of Water Resources. The DWR protects, conserves, develops, and manages much of California's water supply. Its mission is to sustainably manage the water resources of California, in cooperation with other agencies, to benefit the state's people and protect, restore, and enhance the natural and human environments.
- **ESJGWA:** Eastern San Joaquin Groundwater Authority.
- **Ex officio:** A person who holds a position in one body (such as an organization's staff) by virtue of holding a position in another.
- **GBA:** Ground Water Banking Authority. The predecessor agency to the ESJGWA.
- **Government Code Section 7405:** Passed by the State Legislature in 2016, this directs that State governmental entities follow Section 508 of the Federal Rehabilitation Act requiring accessibility of electronic and information technology.
- **GSA:** Groundwater Sustainability Agency.
- **GSP:** Groundwater Sustainability Plan.
- **ISD:** Independent Special District.
- **JPA:** Joint Powers Agreement (or Authority). A written legal agreement between two or more public agencies allowing joint exercise of common powers. See California Government Code beginning at Section 6500.
- **MHI:** Median Household Income.
- **MOA:** Memorandum of Agreement. A written document reflecting an agreement between parties to cooperatively work together on a project or objective.
- **Meeting Minutes:** The official written record of a meeting, including who was in attendance, what decisions were made, and other consequential events that happened at the meeting.
- **Overdraft:** When the rate of groundwater pumping exceeds the rate of groundwater recharge.
- **SB:** Senate Bill.
- **SB 272:** Approved in 2015, SB 272 adds a section to the California Public Records Act requiring local agencies to create a catalog of Enterprise Systems by July 1, 2016, with annual updates.

- **SB 929:** Passed in late 2018, SB 929 is a law requiring all independent special districts in California to create and maintain a website by January 2020, with five distinct pieces of information posted: contact information, the current agenda for regular meetings, a financial transaction report, a compensation report, and an enterprise system catalog.
- **SGMA:** Sustainable Groundwater Management Act. SGMA comprises a three-bill legislative package (AB 1739, SB 1168, and SB 1319) signed by Gov. Jerry Brown in 2015. It requires local agencies to form groundwater sustainability agencies (GSAs) for high- and medium-priority basins. GSAs must develop and implement groundwater sustainability plans (GSPs) to avoid undesirable results and mitigate overdraft by 2040.
- **TAC:** Technical Advisory Committee.
- **Water Code Section 10723:** The part of the California Water Code that pertains to establishing groundwater sustainability agencies.
- **Water Code Section 10728.4:** The part of the California Water Code that describes notification requirements for holding a public hearing prior to adoption or amendment of a groundwater sustainability plan.
- **Zone 2:** Water Investigation Zone No. 2, which was established by the San Joaquin County Board of Supervisors as a Countywide zone in 1989. In 2015, San Joaquin County property owners approved a property-related fee in support of the water management efforts funded by Zone 2.

## Background

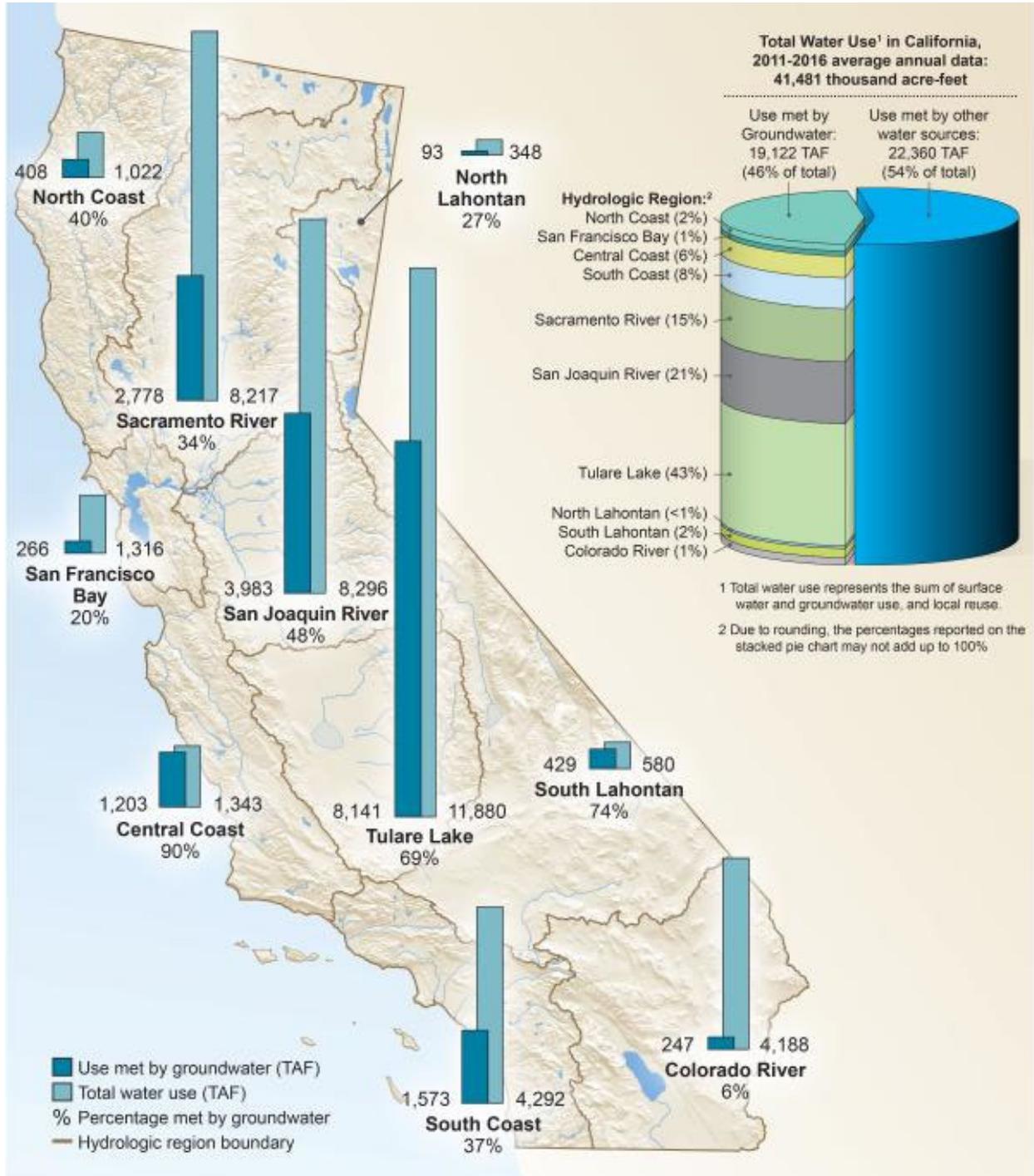
Most Californians depend on two sources for water: surface water and groundwater. Surface water begins as rain or snow running through rivers and streams, lakes, reservoirs, canals, treatment plants, and finally into the pipes that lead to our faucets. Groundwater is held in layers of soil, gravel, and rocks known as aquifers, which absorb and store water that percolates through the soil. Groundwater is pumped from wells and used for drinking and other home uses, for the water needs of businesses and industry, and for farm irrigation and livestock watering. See Figure 1.



**Figure 1. Diagram of the Hydrologic Cycle.**

(Source: Department of Water Resources, "Groundwater: Understanding and Managing this Vital Resource."  
<https://storymaps.arcgis.com/stories/ff075c25b77e4b1d95ce86a82bf0fe96>)

As shown in Figure 2, groundwater use in California varies by location, but Statewide approximately 40 to 60 percent of the water used in California is groundwater. The amount of groundwater used in a year depends on precipitation and reservoir conditions, with more groundwater being pumped in dry years when it serves as a crucial buffer during drought conditions.



**Figure 2. Groundwater Use Versus Other Water Sources for Different Areas of California.**

(Source: Department of Water Resources, "Groundwater: Understanding and Managing this Vital Resource."  
<https://storymaps.arcgis.com/stories/ff075c25b77e4b1d95ce86a82bf0fe96>)

As Figure 1 illustrates, water can go back into the aquifers in a groundwater basin (recharge) through natural processes and human efforts. However, the amount of groundwater is limited. When the rate of pumping exceeds the rate of recharge (overdraft), the aquifer becomes depleted. This can cause shallow wells to go dry and pumping costs to rise as wells must pump water from deeper levels. It can take years, if not decades, to replenish depleted aquifers. In some areas where groundwater levels have dropped because of excessive pumping, portions of the aquifers have collapsed causing the land surface to drop (land subsidence). Less groundwater can be stored in the aquifer for future use, and less groundwater is available as a buffer against drought. Worse, when aquifers collapse, the negative impact on storage capacity cannot be reversed.

The series of “atmospheric river” storms that pummeled California in the winter and spring of 2023 dumped record-setting levels of rain and snow, unfortunately resulting in serious flooding for certain areas. A positive aspect has been the replenishment of depleted lakes and reservoirs, bringing some immediate drought relief. However, the effects of many preceding years of extreme drought, an increase in the number of wells to replace surface water, and the resulting over-pumping of groundwater, cannot be so easily undone. Land subsidence has already occurred, shallow wells have already run dry, and aquifer recovery is slow at best.

In some parts of California, often in underrepresented or disadvantaged rural communities, people rely on groundwater to supply all their water needs. When aquifers in these areas are over-pumped, families are left without clean water for drinking, cooking, and bathing. Over-pumped aquifers also can lead to higher concentrations of pollutants in the groundwater, making the groundwater that remains unsafe for drinking and unusable for agriculture. Over-pumping of groundwater and the resulting negative effects is a serious issue for all Californians.

### **Groundwater Management in California**

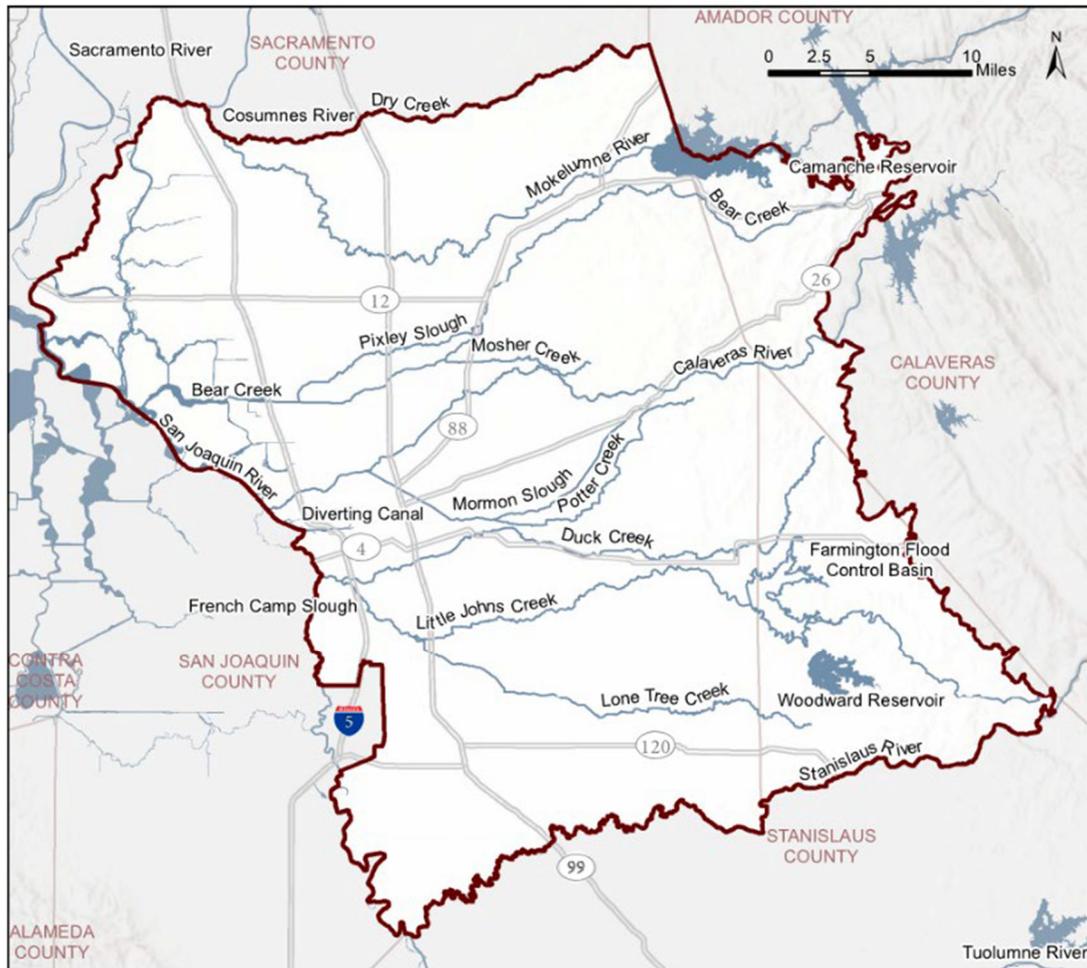
Article X, Section 2 of the California Constitution requires that all water use be both “reasonable and beneficial,” but until recently regulation focused mostly on surface water, not groundwater. Beginning in the early 1900s, the State began to study groundwater and authorized the creation of local water districts to manage groundwater within those districts. Since that time, the State policy has favored local control of groundwater resources, with the State’s role limited to funding technical studies to better understand its groundwater resources. In 1956, the State formed the Department of Water Resources (DWR) to manage much of California's water supply. In the same year, the San Joaquin County Flood Control and Water Conservation District was formed to plan, construct, and operate flood control, water supply, drainage, and groundwater recharge projects. By the 1980s, concern about environmental impacts, including the continuing declines in groundwater levels, led to increased support for more comprehensive management of California’s groundwater. Within San Joaquin County, local water interests have partnered together over the years to build consensus regarding the groundwater resources with varying degrees of successful implementation of plans, however, the subbasins continue to be overdrafted.

In 2014, the State legislature adopted three bills, together known as the Sustainable Groundwater Management Act (SGMA), which for the first time set forth a statewide framework to manage groundwater by shifting the State’s role to that of overseer and potential regulator. In signing SGMA, however, Governor Jerry Brown emphasized that “groundwater management in California is best accomplished locally.” SGMA and subsequent Statewide regulations require local agencies to

develop and implement plans for sustainable groundwater management within specified timelines or face the consequence of the State taking over groundwater management. SGMA and subsequent State regulations require local agencies to form Groundwater Sustainability Agencies (GSAs) for all medium and high-priority groundwater basins in the State. GSAs are required to develop and implement Groundwater Sustainability Plans (GSPs) designed to avoid undesirable results and mitigate overdrafts by 2040. The State Department of Water Resources (DWR) provides regulatory oversight through its responsibility to evaluate and assess GSPs.

### Groundwater Management for San Joaquin County

Groundwater in San Joaquin County is found in two separate subbasins of the San Joaquin Valley Groundwater Basin: the Eastern San Joaquin Subbasin and the Tracy Subbasin. The 2022-2023 Grand Jury focused its attention on the Eastern San Joaquin Subbasin (see Figure 3), one of 21 basins and subbasins the DWR has identified as being in a condition of critical overdraft.



**Figure 3. Eastern San Joaquin Subbasin.**

*(Source: Eastern San Joaquin Groundwater Authority, "Eastern San Joaquin Groundwater Subbasin Groundwater Sustainability Plan," November 2019; revised June 2022. [https://www.sjgov.org/docs/default-source/public-works-documents/water-resources/final-esj-revised-gsp\\_june2022\\_clean.pdf?sfvrsn=675b059b\\_5](https://www.sjgov.org/docs/default-source/public-works-documents/water-resources/final-esj-revised-gsp_june2022_clean.pdf?sfvrsn=675b059b_5))*

The Eastern San Joaquin County Groundwater Banking Authority established in 2001 consisted of many of the same members as the ESJGWA. This group produced a Groundwater Management Plan in 2004 to address the overdraft situation as well as other water management projects. Complete follow-through on this plan and prior plans was hindered primarily by lack of funding. However, lessons learned have provided solid groundwork for the establishment of the SGMA-focused ESJGWA.

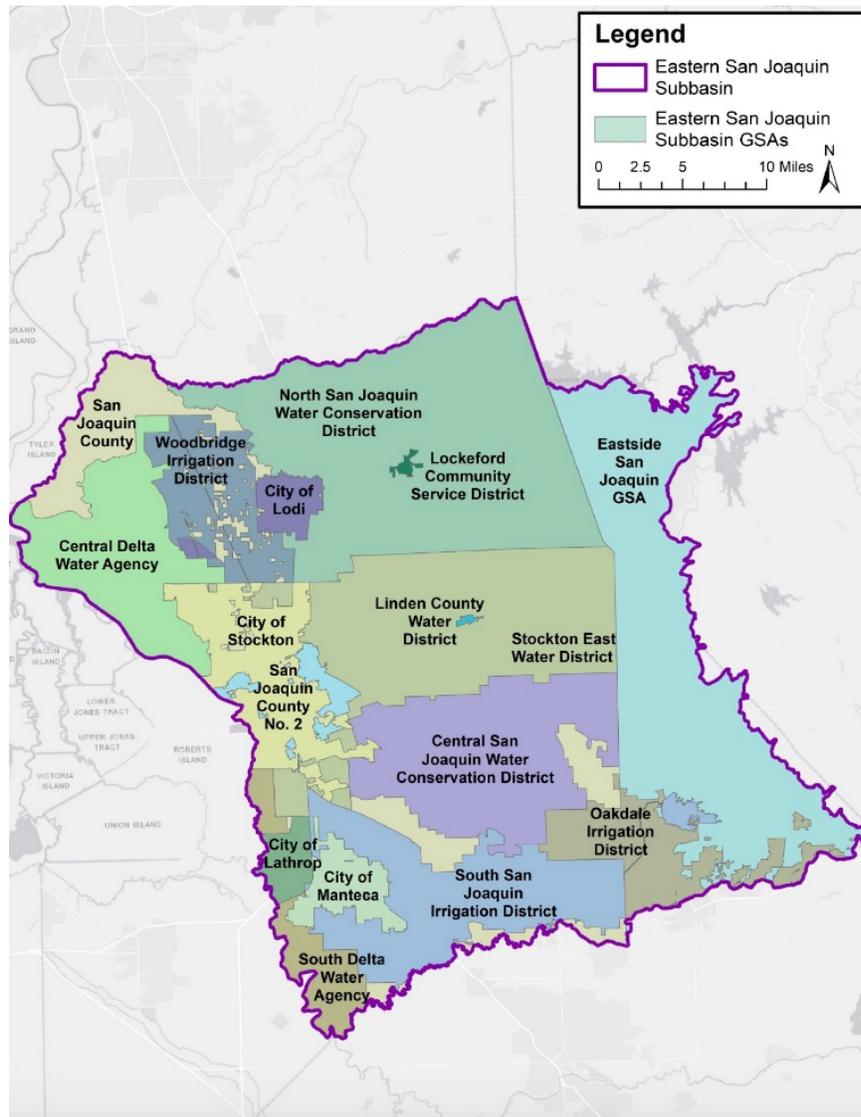
In April 2017, the 16 GSAs and local agencies responsible for managing the groundwater in the subbasin entered into a joint exercise of powers agreement (JPA) to establish the Eastern San Joaquin Groundwater Authority (ESJGWA) “for the purpose of coordinating the various GSAs’ management of the Basin, in accordance with SGMA” (JPA, Recital D). Later that year, San Joaquin County and California Water Services (Cal Water), an investor-owned utility that has groundwater management operations and acts as an urban water supplier in the subbasin, signed a Memorandum of Agreement (MOA) authorizing Cal Water to participate as a limited voting member in a GSA pursuant to a provision in SGMA allowing such arrangements.

The GSAs comprising the ESJGWA are a mixture of independent special districts (ISDs), municipalities, and San Joaquin County. As defined by the California Special Districts Association, “Special districts are local governments created by the people of a community to deliver specialized services essential to their health, safety, economy, and well-being. A community forms a special district, which are political subdivisions authorized through a state’s statutes, to provide specialized services the local city or county do not provide.”

Both the ESJGWA and its member GSAs are governed by individual boards of directors. The boards of the GSAs are elected by the people of their respective communities, and typically consist of three, five, or seven members. ESJGWA Board members serve by appointment; each GSA selects one of the members of its board (plus an alternate) to also serve on the ESJGWA Board. Thus, the ESJGWA Board has 16 members. The 16 GSAs that comprise the ESJGWA are as follows:

- Calaveras County Water District/Stanislaus County (Eastside San Joaquin GSA)
- California Water Service Company (Cal Water-San Joaquin County No. 2)
- Central Delta Water Agency
- Central San Joaquin Water Conservation District
- City of Lodi
- City of Manteca
- City of Stockton
- Linden County Water District
- Lockeford Community Services District
- North San Joaquin Water Conservation District
- Oakdale Irrigation District
- San Joaquin County
- South Delta Water Agency
- South San Joaquin Groundwater Sustainability Agency
- Stockton East Water District
- Woodbridge Irrigation District GSA

The service areas for each of these agencies is shown in Figure 4.



**Figure 4. Areas Served by ESJGWA Member GSAs.**

(Source: Eastern San Joaquin Groundwater Authority, "Members." <http://www.esjgroundwater.org/About-Us/Members>)

### Reason for Investigation

The Grand Jury received a citizen's written complaint, conducted an interview, and subsequently reviewed issues concerning public outreach and engagement by the ESJGWA. According to the State's publication, *Governments Working Together, A Citizen's Guide to Joint Powers Agreements*, the Grand Jury is an agency for the public that can provide independent oversight of Joint Powers Authorities such as the ESJGWA. Due to the significance of water issues to the citizens of San Joaquin County, the ESJGWA's activities were an important subject for investigation.

## Method of Investigation

Owing to the history and complexity of water issues and entities in the Eastern San Joaquin Subbasin, the 2022-2023 Grand Jury concentrated its investigation on the transparency of the ESJGWA's meetings, public engagement, and decision-making processes; its efforts to encourage and facilitate public participation during and after the development of its initial Groundwater Sustainability Plan (GSP) as required by the Sustainable Groundwater Management Act (SGMA); and the correctness and transparency of its financial records. The Grand Jury did not evaluate the substantive actions recommended in the Groundwater Sustainability Plan adopted by the ESJGWA.

The Grand Jury reviewed the legal requirements and State Department of Water Resources (DWR) recommended actions for developing a GSP; the ESJGWA's governance documents and bylaws; the meeting minutes for the ESJGWA Board and other committees; ESJGWA and GSA websites; presentations and budgets; technical and outreach materials related to how the ESJGWA developed its GSP; and correspondence from stakeholder organizations. The Grand Jury conducted 12 interviews with current and former ESJGWA and GSA Board members, County officials, staff, and stakeholders. Grand Jury members also attended several ESJGWA and GSA Board meetings.

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## Discussions, Findings, and Recommendations

### 1.0 Outreach and Engagement

Much of what the Sustainable Groundwater Management Act (SGMA) requires of local agencies like the Eastern San Joaquin Groundwater Authority (ESJGWA) is beyond the scope of this Grand Jury investigation. However, the statute and California Department of Water Resources (DWR) regulations include provisions to promote involvement of interested parties in the formation of a Groundwater Sustainability Agency (GSA) and in the development and implementation of a Groundwater Sustainability Plan (GSP). As the local agency formed specifically to “cooperatively carry out the purposes of SGMA” and “satisfy the requirements of SGMA for coordination among GSAs” (JPA, Article 3.4(c) and (e)), the Grand Jury determined to investigate whether the ESJGWA had fulfilled, and is currently fulfilling, those public outreach obligations.

DWR’s primary role in SGMA is to give guidance and support to GSAs. This is done through regional coordinators along with staff from four regional offices to serve as primary points of contact for GSAs. This support includes guidance on communication and engagement. During the Grand Jury’s investigation, it became evident that communication and engagement while developing the GSP was challenging. To support ESJGWA, DWR provided grant funding and contracted consultants to assist with outreach efforts.

#### 1.1 Requirements and Suggested Practices for Outreach Under SGMA

In January 2018, DWR published the *Guidance Document for Groundwater Sustainability Plan Stakeholder Communication and Engagement*. The guidance provided that: “Other than what is required by statute or regulation, GSAs have discretion on how they communicate and engage with the beneficial uses and users of groundwater within a basin,” and “expertise of stakeholders may increase the chance that the GSAs are using best available information and best available science for GSP development.” The guidance document included a chart to help GSAs determine who should be invited to engage in GSP development. The chart is reproduced in Appendix A.

In addition, according to the State-prepared fact sheet, *Sustainable Groundwater Management Act, Stakeholder Inclusion*: “SGMA requires consideration of the interests of diverse, social, cultural, and economic elements of the populations within the basin during plan development. Collaborative and inclusive processes can make plans more resilient by increasing buy-in and trust. . . . It is important that GSAs send appropriate notices; hold meetings in times, places, and manners that support effective engagement; and acknowledge issues raised.”

To promote inclusiveness in the development and implementation of a basin’s GSP, SGMA **requires** that an agency take the following actions:

- Consider the interests of all beneficial uses and users of groundwater in the basin, including agricultural and domestic users, municipal uses, environmental uses, users of interconnected surface water, Federal and State agencies, California Native American tribes, and disadvantaged communities (Water Code, Section 10723.2).
- Maintain a list of interested persons to whom the GSA will send notices regarding plan development, meetings, and other activities (Water Code, Section 10723.4).

- Issue a written statement describing the manner in which interested parties may participate in the development and implementation of the plan. This statement must be provided to cities, counties, and public water systems located in the plan area (Water Code, Section 10723.8).
- Provide notice and hold a public hearing at least 90 days after providing notice prior to adoption or amendment of a plan (Water Code, Section 10728.4).
- Describe GSA outreach efforts in plans (California Code of Regulations, Section 354.10(d)(3)).

SGMA also **suggests** the agency implement the following actions:

- Hold meetings in places and at times that support participation, including evening meetings to accommodate those unable to otherwise attend.
- Send notices both electronically and via mail.
- Send notices in languages that people understand and otherwise communicate effectively across diverse language groups.
- Ensure the notices are sent to disadvantaged communities, public water suppliers serving those communities, small agricultural operations, and other interest groups who may face barriers to participating in GSA efforts. People who are not active in, or represented by, an existing agency, association, or group, may need additional effort to reach and engage.
- Document GSA outreach efforts.
- Share outreach responsibilities with partner agencies that are available and have expertise in the subject.

## **1.2 Outreach Efforts Before and After Initial Submittal of the GSP**

### **1.2.1 Public Meetings**

The Grand Jury found that during development of the initial GSP, from July 2017 until submittal to the DWR in late January 2020, the ESJGWA held numerous meetings that were open to the public, including 28 Board of Directors meetings and 20 Advisory Committee meetings. Since the initial GSP submittal, from February 2020 until present (April 2023), 21 Board meetings and 22 Steering Committee meetings have been held. As described fully in Section 3.2.1, ESJGWA Board and Advisory/Steering Committee meetings have consistently been held on weekdays during the morning.

### **1.2.2 Informational Open House Events**

During the period of initial GSP development, the ESJGWA held four informational open house events: August 29, 2018 (Stockton); November 7, 2018 (Manteca); February 12, 2019 (Lockeford); and July 18, 2019 (Stockton). The purpose of these informational events, according to event announcement flyers, was to offer “a series of public meetings to provide updates on local efforts to meet the State’s SGMA goals.” The flyers further invited the public “to learn about sustainable groundwater management. You will have the opportunity to ask questions and provide input about the Groundwater Sustainability Plan.” In addition to these general events, the ESJGWA also

provided seven presentations to targeted community groups in 2018 and 2019. Some member GSAs provided outreach presentations to their communities during this same period. Other than a SGMA update event held on July 22, 2021, in Ripon, the Grand Jury found no additional public information events have been held since the initial GSP submittal to the DWR in January 2020.

According to the ESJGWA's June 2022 GSP update, a total of 175 individuals attended the four open houses. However, multiple witnesses testified that with one exception, the open house events had low attendance, with only 15-20 members of the public over the course of several hours. An opinion expressed by several witnesses was that "trying to get public input is really tough," especially with a topic as esoteric as groundwater management.

### 1.2.3 Communications Responsibility and Planning

An important consideration about effective public engagement and outreach regarding SGMA and the GSP is: whose responsibility is it, the ESJGWA's or the individual member GSA's? The answer is *both*. JPA Article 2.8 states in part, "The Members intend through this Agreement to cooperate to...conduct outreach to Other Basin Agencies and private parties..." Both the ESJGWA and individual member GSAs are required by SGMA to engage in outreach activities. Some witnesses stated that, in addition to their efforts, the ESJGWA looked to individual GSAs to engage with their respective communities. However, the Grand Jury examination of member GSA websites shows a wide variation in the amount of information provided. Some have a great deal of information about SGMA and the GSP, while others have some, and a few have no information. A few GSAs held outreach events during GSP development, but the majority did not. The Grand Jury concluded that between the ESJGWA and member GSAs, outreach and engagement efforts have been uneven.

The ESJGWA hired consultant firms both to develop the GSP and to assist in formulating and executing a public outreach and engagement strategy, which was to be implemented while the GSP was being completed. A *Stakeholder Engagement & Public Outreach Plan*, dated June 25, 2018, and labeled DRAFT, was posted to the ESJGWA's website, but as of April 2023 had been removed. The draft plan is included as an appendix to the June 2022 version of the GSP. Based on witness testimony, the Grand Jury concluded this plan was never finalized nor formally implemented by the Board, though aspects of it appear to have been used.

Clear messaging to gain stakeholder interest was problematic given the technical and complex nature of groundwater management. This difficulty was evidenced by the Grand Jury's questioning of witnesses critical of ESJGWA's efforts. To better understand the outreach shortfalls, the Grand Jury questioned what the message "should be" and how best to engage the public. No specific messaging was suggested, while outreach ideas included visiting local community areas to conduct individual discussions or sending notifications by mail, which some witnesses stated was not effective. Many affirmed the issue was complicated.

Witness testimony and minutes from recent Board and Steering Committee meetings demonstrate a renewed interest in outreach and engagement by the ESJGWA motivated by the five-year GSP update cycle required under SGMA. Funds for outreach efforts have been limited; however, for 2023, DWR has funded a consultant firm to work with the Board to develop a new communications and engagement plan. Current efforts include, as suggested by SGMA, efforts to "share outreach responsibilities with partner agencies that are available and have expertise in the subject."

#### 1.2.4 Sustainability Work Group

One aspect of the draft *Stakeholder Engagement & Public Outreach Plan* that appears to have been implemented was the Stakeholder Work Group (subsequently renamed Sustainability Work Group), which began in July 2018. The Sustainability Work Group consisted of 16 members representing a range of interests, including wildlife habitat, water conservation, agriculture/farming, and environmental justice. Aided by a DWR facilitator and other consultant personnel, the group met monthly to “review and/or provide input to the consulting team who is developing the GSP about groundwater-related issues.” The *Eastern San Joaquin Groundwater Sustainability Work Group Stakeholder Assessment Highlight Report*, produced by consultant personnel and dated December 31, 2018, described inadequacies and frustrations perceived by some members with the work group and GSP development process, including:

- Insufficient outreach to and inclusion of potential members of other organizations.
- A concern the work group was just a “check-the-box” exercise and would not result in meaningful contributions to the GSP.
- Insufficient time at meetings for discussion after information was presented to the group.
- Lack of clarity on how work group comments will be incorporated into GSP development.
- A need for more diverse representation in the ESJGWA organization and its decision making; specifically, to include environmental and environmental justice interests.
- A belief that outreach to the broader public was lacking and that many people who could be impacted by the GSP were not aware of the development process.

Testimony offered by some witnesses echoed and added to concerns expressed by members of the Sustainability Work Group, while others said they felt ESJGWA consultants had done a reasonably good job. Some witnesses testified that suggestions and ideas from the work group were completely ignored, while others said they had been used to inform the GSP. A witness testified consultant staff did not possess detailed knowledge of local issues facing specific groups such as some urban water users and small domestic well owners. The Sustainability Work Group continued to meet until December 2019, at which point it was disbanded. Witness testimony included the recommendation to reactivate the Sustainability Work Group.

#### 1.2.5 List of Interested Persons

In accordance with Water Code Section 10723.4, the ESJGWA developed a list of persons who expressed interest in the development and implementation of the subbasin GSP. According to the revised GSP (June 2022), this list was developed from “existing stakeholder lists and databases from prior Eastern San Joaquin Subbasin engagement efforts, conducting new research, and obtaining referrals from key stakeholders and stakeholder groups.” Interested persons could also subscribe to the mailing list on [esjgroundwater.org](http://esjgroundwater.org). Flyers advertising the four outreach events described in Section 1.2.2 were distributed to individuals and groups on the interested persons list via email and hard copies.

The interested persons list was used recently by ESJGWA’s consultant for a survey in the initial stages of developing the new communication and engagement plan. The ESJGWA consultant found

the list to be “weak,” and they will be connecting with other groups to broaden and update their outreach. One witness testified that ESJGWA outreach efforts since January 2020 have been “minimal” and had been curtailed because of budgetary constraints, while another stated they had not received any notifications from the ESJGWA since GSP submittal.

## **Findings**

**F1.2.1** The Eastern San Joaquin Groundwater Authority has provided no public information events on the status of the adoption and implementation of the Groundwater Sustainability Plan since July 2021, leaving the public largely unaware of what the Eastern San Joaquin Groundwater Authority is doing regarding groundwater sustainability and the associated effects and costs of Groundwater Sustainability Plan implementation.

**F1.2.2** The Eastern San Joaquin Groundwater Authority developed but never formally approved or adopted an engagement and public outreach plan, and although the Department of Water Resources is now funding a consultant firm to work with the Board of Directors to develop one, public communications and engagement efforts so far have been limited and ineffective.

## **Recommendations**

**R1.2.1** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors, in consultation with member Groundwater Sustainability Agencies, develop, adopt, and implement a schedule for regular public events to provide information on Groundwater Sustainability Plan adoption and implementation and the associated effects and costs.

**R1.2.2** By December 31, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors follow the Department of Water Resources-funded communications consultant’s recommendations in developing, adopting, and implementing a communications and outreach plan and that the plan be posted to its website upon adoption.

### **1.3 Efforts to Reach Diverse Population Groups**

SGMA requires that agencies developing Groundwater Sustainability Plans, “Consider the interests of all beneficial uses and users of groundwater in the basin, including...disadvantaged communities” (Water Code, Section 10723.2). DWR defines a disadvantaged community (DAC) as a community with an annual median household income (MHI) that is less than 80% of the Statewide annual MHI. Multiple communications from various stakeholder groups to the ESJGWA, which were provided to the Grand Jury, questioned the DWR’s income-only-based definition of DAC. These stakeholders urged the ESJGWA to consider other factors, such as socioeconomics, public health, and environmental hazards, in determining whether a community is “disadvantaged.”

In its GSP, the ESJGWA includes a description of DACs they identified in the subbasin. However, there is no mention of outreach efforts tailored to DACs, only that DACs are included in the overall target audience for outreach and engagement efforts. Specifically, two witnesses noted that domestic well owners and small community water systems had not been engaged, either before GSP submittal or since. Additional witness testimony acknowledged that these users might not be DACs as defined by DWR, but insufficient engagement of these users remains the case.

In reviewing numerous printed and electronic materials used by the ESJGWA for outreach and educational purposes, the Grand Jury noted they were primarily in English, with a few flyers also in Spanish. No materials were in other languages. According to the San Joaquin County Council of Governments, 39 languages are spoken in County homes, including significant numbers speaking Spanish, Tagalog, Vietnamese, Mandarin, Cantonese, and Arabic.

## **Findings**

**F1.3.1** The Eastern San Joaquin Groundwater Authority's efforts to identify and engage with people who are members of disadvantaged communities have been limited, potentially excluding members of these communities from learning about and having a voice in groundwater sustainability plans.

**F1.3.2** Informational materials used to communicate with and inform residents of the subbasin have been in English and Spanish only, thus leaving subbasin residents who speak and read other languages potentially uninformed about the Eastern San Joaquin Groundwater Authority and its activities.

## **Recommendations**

**R1.3.1** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors develop specific methods for better identifying and engaging with disadvantaged communities in the Eastern San Joaquin Subbasin and include these in the communication and engagement plan currently being developed with the Department of Water Resources.

**R1.3.2** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors develop methods for communicating more effectively with major non-English speaking groups and include these in the communication and engagement plan currently being developed with the Department of Water Resources.

## **2.0 Funding, Budgets, and Expenditures**

The Eastern San Joaquin Groundwater Authority (ESJGWA) was created to develop a Groundwater Sustainability Plan (GSP) that achieves groundwater sustainability in the Eastern San Joaquin Subbasin by 2040. The Subbasin's existing independent water management agencies agreed that cooperating to form the ESJGWA was an efficient and cost-effective method to develop the GSP for initial and ongoing compliance with the Sustainable Groundwater Management Act (SGMA) within the Subbasin (Joint Powers Agreement, Recital E). Plan development entailed obtaining and coordinating the necessary funding, staffing, data collection and analysis, and identifying projects or strategies to meet current and future water demands.

Preparing and submitting the GSP to the Department of Water Resources (DWR) for review and approval within the deadlines established by SGMA and DWR was a complex and expensive challenge. This successful endeavor by the ESJGWA is singular within the State. Of special note is the number and diversity of the 16 GSAs within the Subbasin collaborating on one plan for the entire Subbasin. These autonomous agencies vary in size, user types, water sourcing methods, and administrative and financial levels.

The recent approval by DWR of the ESJGWA's GSP is a notable achievement and ensures water management in San Joaquin County remains local as the GSAs adhere to the approved plan. A significant benefit of retaining local control rather than the State taking control is much lower costs to all users within the Subbasin area. In addition, proposals for projects supporting GSP implementation, when presented as a unified ESJGWA body, are more substantial and compelling for obtaining financial support in the form of grants and/or tax or fee increases to ensure project completion and continuous success toward the sustainability goal.

In reviewing their annual budgets, the Grand Jury found the primary source of funding for the ESJGWA's work to this point has been DWR grants (roughly 50% of funding). The balance of ESJGWA funding comes from a combination of GSA member contributions and the County's Water Investigation Zone 2 fund (about 25% each). The GSA member contribution is a cost allocation determined by a formula established by the ESJGWA Board to be paid by each member GSA (JPA, Article 3.9.c.). As discussed in more detail below, the Zone 2 fund revenue derives from a Countywide property fee.

### **2.1 Water Investigation Zone 2 Funds Used By the ESJGWA**

The Grand Jury investigated the use of Zone 2 funds by the ESJGWA. Zone 2 revenue pays for water resource planning activities of the San Joaquin County Flood Control & Water Conservation District (District), which reports directly to the County Board of Supervisors. The District established Zone 2 to provide a revenue source through a property fee levied on all properties within the County. The planning activities funded by Zone 2 must support the six goals of the County's *2015 Strategic Plan to Meet Water Needs*, one of which is "manage groundwater in eastern San Joaquin County" (County Resolution R-15-17).

The Grand Jury was particularly interested in the use of Zone 2 funds relating to ESJGWA member Cal Water. Pursuant to the JPA that formed the ESJGWA, once all autonomous member water agencies within the Subbasin had formed GSAs and established their boundaries, San Joaquin County formed a GSA that included all remaining properties. California Water Service (Cal Water) is a private investor-owned utility that delivers water to properties both within the City of Stockton and to unincorporated areas within the County. Under SGMA, private investor-owned utilities such as Cal Water cannot form their own GSAs but can participate in a limited fashion in connection with a local agency. The City of Stockton retained Cal Water's service area within its GSA, while the County opted to enter into a Memorandum of Agreement (MOA) with Cal Water. The MOA divides the County's GSA into two separate areas, called County GSA (also identified as Eastern San Joaquin 1) and Cal Water-County GSA (also identified as Eastern San Joaquin 2). The MOA grants Cal Water limited participation rights in ESJGWA planning efforts in exchange for Cal Water's agreement to pay all costs associated with Cal Water-County GSA. (MOA, Article 4)

The Grand Jury reviewed available financial records of the ESJGWA and the County (listed in Section 2.2 below) and determined that Cal Water has paid all ESJGWA costs associated with the Cal Water-County GSA, as allocated by the formula used for cost allocation to all GSAs located within the County. The cost allocation paid by each GSA within the ESJGWA, including Cal Water-County GSA, is reduced by a credit from Zone 2 funds. The Eastern San Joaquin GSA represents properties located outside the County and does not receive the Zone 2 credit.

## Findings

**F2.1.1** The Memorandum of Agreement with Cal Water benefits the County and its taxpayers by reducing the cost allocation paid by the County and incorporates Cal Water’s expertise and support into the Groundwater Sustainability Plan development and implementation.

**F2.1.2** Zone 2 property fees are collected by the County within the Cal Water-County GSA boundaries. Therefore, it is reasonable and equitable that Cal Water-County GSA receives the same reduction to its member cost allocation as all other County Groundwater Sustainability Agencies to reflect the property fees paid into the Zone 2 fund.

### **2.2 Transparency and Ease of Access to Financial Information**

During its investigation, the Grand Jury requested, received, and reviewed the following financial data: Zone 2 Fund Reports (2016-2022), ESJGWA Fund Reports (2018-2022), Countywide annual audits (2014-2021), Chart of Accounts, Vendor Payments (2015-2022), ESJGWA and Zone 2 projected and actual budgets, and annual County proposed budget reports prepared for the Board of Supervisors. In addition, Grand Jury members reviewed the County’s OpenGov Financial Data Transparency Portal. The Grand Jury also heard testimony from County officials familiar with ESJGWA financial processes.

The San Joaquin County Public Works Department provides accounting services for the ESJGWA and develops budgets for approval by the ESJGWA Board and the County Board of Supervisors (JPA, Article 4.10). The Grand Jury found the annual proposed budgets on the County Administrator’s Office (CAO) Budget public website to be an excellent overview of both Zone 2 and ESJGWA origination, purpose, and fiscal year planning. Revenues collected for Zone 2 and the ESJGWA are held separately in the County Treasury (JPA, Article 5.7). The Zone 2 fund is not audited separately from the District, and the County Auditor-Controller’s Office does not prepare a separate financial statement. The Flood Control & Water Conservation District posts on its website the annual Engineer’s reports for the beneficial use Zones 9 and 10. These reports include services provided, the budget to provide the services, and the criteria. However, according to witness testimony, the District does not post an annual report for Zone 2 accountability.

ESJGWA is audited annually in accordance with JPA Article 5.8 and is included in the “County of San Joaquin, California” annual audit, which is conducted by an independent auditor. Within this audit, the ESJGWA is labeled a “Nonmajor Special District Governed by the Board of Supervisors.” Audits reviewed by the Grand Jury from 2014 to 2021 include ESJGWA from 2017 on, with a brief description of “Eastern San Joaquin Groundwater Authority... established in 2017.” However, from 2018 to 2021, the balance sheet column heading lists the ESJGWA as the “Eastern San Joaquin Ground Water **Banking** Authority,” which is a different agency established prior to the ESJGWA, and which terminated in 2022. A review of preceding audits does not include any Eastern San Joaquin authorities. The Grand Jury also received ESJGWA fund reports (labeled “21451”) from the Auditor-Controller’s Office and compared fund balances. The Grand Jury noted that year-end balances between the audits and the fund reports differ, as summarized in Table 1.

**Table 1. Differences Between County Audited Year-End Balances and the 21451 Fund Report**

<b>Audit Combining Balance Sheet</b>				
<b>2022</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
–	386,618	(641,657)	(483,152)	474,139
<b>Audit Combining Statement of Revenues, Expenditures</b>				
–	369,813	(641,657)	(483,152)	275,982

**ESJGWA 21451 Fund Report**

<b>2022</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>
370,409	380,025	(553,577)	(328,783)	442,117

Neither the County nor ESJGWA provides easy access to ESJGWA financial information. The County’s OpenGov Financial Data Transparency Portal can be utilized to examine how Zone 2 funds are used, but the Grand Jury found it very difficult to locate and access this information. The Zone 2 budget link leads to a page with only minimal information. More information regarding Zone 2 and projects is available elsewhere on the District’s website, but it is difficult to find that information. Similarly, the ESJGWA’s website does not provide a convenient link to ESJGWA budgets or financial information. That information can only be found by searching through agenda meeting packets of the Board and the Steering Committee. Even so, budget information presented at a meeting might not be included in the packets. For example, on February 8, 2023, the Steering Committee considered a draft budget proposal, but the proposal was not included in the meeting packet available to the public. The Grand Jury requested and received a copy of the proposed budget presentation, but it was not clear how the public would know to request that information.

**Findings**

**F2.2.1** Important Eastern San Joaquin Groundwater Authority financial information is not readily available on the Eastern San Joaquin Groundwater Authority website, effectively depriving the public access to this information.

**F2.2.2** Important Zone 2 financial information is not readily available on the San Joaquin County Flood Control & Water Conservation District’s website, therefore does not meet the public’s need for transparency.

**F2.2.3** The Eastern San Joaquin Groundwater Authority is included in the annual San Joaquin County independent audit, but the audited fund balance differs from the fund balance report, calling into question the data included in the reported financials.

**F2.2.4** The independent auditor lists and discusses the Eastern San Joaquin Groundwater Authority in the “Summary of Significant Accounting Policies.” The balance sheet column heading listing the previous Ground Water Banking Authority (GBA) is incorrect, lessening public confidence in the audit.

## **Recommendations**

**R2.2.1** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board modify the Eastern San Joaquin Groundwater Authority website to provide the public clear and convenient access to a more detailed Eastern San Joaquin Groundwater Authority budget with prior-year actuals.

**R2.2.2** By November 1, 2023, the County Board of Supervisors modify the Flood Control & Water Conservation District’s website to provide the public clear and convenient access to financial and project information related to the use of Zone 2 funds, including prior year actuals and services provided each year.

**R2.2.3** By November 1, 2023, the County Auditor-Controller’s Office explain the difference between the County annual audits and the #21451 fund reports and make the explanation available to the public.

**R2.2.4** By November 1, 2023, the County Auditor-Controller’s Office review the County independent audit balance sheets column header and the description narrative to confirm Eastern San Joaquin Groundwater Authority as the entity audited and use the correct name in future independent audit balance sheets.

## **3.0 Public Information and Transparency**

The Eastern San Joaquin Groundwater Authority (ESJGWA) is a public entity formed through a joint exercise of powers agreement (JPA), pursuant to the Joint Exercise of Powers Act (California Government Code Section 6500 et seq.). Its member independent special districts (ISDs), cities, and San Joaquin County are also local government agencies. Although these entities, individually and collectively, can be effective at their various local government responsibilities, what they do and how they operate is often a mystery to the public. Recognizing the need for transparency and accountability, the State has over the years enacted several pieces of legislation. These include the Ralph M. Brown Act (Government Code Sections 54950–54963) and SB 929, part of the California Public Records Act (CPRA).

The Brown Act is the State’s “sunshine law” for local agencies, requiring them to conduct their business at open and public meetings. It is based upon the policy that the people must be informed so they can keep control over their government. Among other things, the Brown Act requires meeting agendas for the Board of Directors and standing committees to be posted in a public place and on the agency’s website, if it has one, at least 72 hours in advance to help the public participate. Standing committees are committees that have been formally established by the Board with set meeting times. Ad hoc committees, which are temporary committees formed for a single task and then dissolved, are not subject to the Brown Act. JPAs such as the ESJGWA are subject to the provisions of the Brown Act.

### **3.1 Website**

SB 929 required that by January 2020, all ISDs must establish and maintain a website. The ESJGWA has established a website, [esjgroundwater.org](http://esjgroundwater.org), which provides general information about groundwater sustainability; meeting times, agendas, and minutes; outreach efforts during GSP

development; and various reports. While not an ISD itself, the ESJGWA includes many ISDs as members and in the interest of transparency and good governance should adhere to the same website standards as its member agencies. These requirements include posting:

- contact information;
- the most recent agendas for Board and all standing committee meetings;
- a report of financial transactions or link to the State Controller’s website; and
- board compensation or link to the State Controller’s website.

In addition to these requirements of SB 929, SB 272 requires agencies to provide an Enterprise System Catalog, a list of certain software programs used by the agency. Government Code Section 7405 requires all public agency websites be accessible to visually impaired and deaf persons.

The Grand Jury found that the ESJGWA’s website does not fully comply with these transparency and accessibility laws, and only one of the 16 member GSAs is in full compliance. First, esjgroundwater.org does not include a financial transaction report (such reports must be submitted to the State Controller’s Office annually), nor does it have a link to the State Controller’s website. Second, the website does not include a Board of Director’s compensation report nor link to the State Controller’s website. Third, it does not include an Enterprise System Catalog. Fourth, a cursory test by a Grand Jury member using the accessibility.org compliance checker indicated the ESJGWA’s website does not comply with State government accessibility guidelines. Several ESJGWA Board and staff members interviewed by the Grand Jury could not confirm if the website was accessible to sight-impaired persons. See Appendix B, ESJGWA Website Compliance, for compliance details.

The Grand Jury heard testimony from several individuals connected with the ESJGWA that included uncertainty about whether the website was compliant with applicable statutes, recognized that deficiencies existed, and acknowledged that complaints had been received. These witnesses also testified that staff work demands are high, and the timely posting of information to the website is a lesser priority that they would like to rectify.

## **Findings**

**F3.1.1** The Eastern San Joaquin Groundwater Authority website does not provide the State-required Financial Transaction Report or a link to the State Controller’s website, which decreases transparency.

**F3.1.2** The Eastern San Joaquin Groundwater Authority website does not list the Board compensation report or a link to the State Controller’s website, reducing transparency.

**F3.1.3** The Eastern San Joaquin Groundwater Authority website does not provide an Enterprise System Catalog, which violates public records and transparency reporting requirements.

**F3.1.4** The Eastern San Joaquin Groundwater Authority website does not meet the accessibility requirements established by Government Code Section 7405, which could make it difficult for

some members of the public to access the site and could expose the Eastern San Joaquin Groundwater Authority to legal action.

**F3.1.5** The Eastern San Joaquin Groundwater Authority website is not updated in a timely manner, causing frustration for site visitors and the appearance of a lack of transparency.

## **Recommendations**

**R3.1.1** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors update their website to include the current Financial Transaction Report (or link to the State Controller’s website) to ensure compliance with SB 929.

**R3.1.2** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors update their website to include a Board compensation report (or link to the State Controller’s website) to ensure compliance with SB 929.

**R3.1.3** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors update their website to include an Enterprise System Catalog to ensure compliance with SB 272.

**R3.1.4** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors ensure that their website complies with the requirements of Government Code Section 7405.

**R3.1.5** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors consult with San Joaquin County’s Information Systems Division to recommend, develop, and implement methodologies to ensure the timely posting of information to the Eastern San Joaquin Groundwater Authority website.

## **3.2 Board, Standing Committees, and Advisory Committees**

The ESJGWA Board of Directors meets monthly, as described in the JPA Agreement and Board Bylaws. These governance documents also provided for the establishment of one or more advisory committees, technical committees, and ad hoc (temporary, single purpose) committees. The Board of Directors had its first meeting in June 2017 and the Advisory Committee in May 2018. Because they were formally established and meet on a continuing basis, meetings of the Board and the Advisory Committee (which in 2020 became the Steering Committee) must be conducted in accordance with the Ralph M. Brown Act.

### **3.2.1 Meeting Times, Cancellations, and Scheduling Changes: When Do You Meet?**

Open meetings are a primary way for interested citizens to engage with and provide input to public agencies and officials. The ESJGWA’s Bylaws and its website state that regular Board meetings are held on the second Wednesday of each month “at 9:30 a.m. or at a time specified by the Authority Board.” The website indicates Board meetings are held at 11:00 a.m. After examining agendas and meeting minutes, the Grand Jury determined Board meetings have commenced at 10:30 a.m. since March 2020. At its meeting held January 11, 2023, the Board voted to move to a quarterly meeting schedule, with occasional special meetings as needed, and with a starting time of 10:30 a.m.

Advisory and Steering Committee meetings have generally also been held during morning hours, prior to Board meetings. As noted in Section 1.1, SGMA guidance suggests that public meetings be held “at times that support participation.” The Grand Jury heard testimony and received documentary evidence that requests to hold public meetings after regular working hours had been made multiple times over several years. These requests stated holding meetings after work hours would help promote public participation and outreach. To date, no changes have been made. Most member GSAs also hold their monthly Board meetings in the morning time or early afternoon; 25% hold them after regular working hours.

In reviewing Board and Advisory/Steering Committee agendas and meeting minutes from the formation of the ESJGWA until present, the Grand Jury noted an increasing number of meeting cancellations over time, as shown in Table 2. All scheduled meetings of the Steering Committee from February to June 2022 were cancelled. In June 2020, the Board reduced its number of meetings, convening approximately quarterly until January 2022 when a monthly schedule was resumed. The Steering Committee continued a monthly schedule during this period. Meetings and meeting cancellations for the Board and Advisory/Steering Committee were properly noticed in accordance with the Brown Act.

**Table 2. Number of Meetings Cancelled from Inception to Present**

	2017	2018	2019	2020	2021	2022	2023 (thru May)
<b>Board of Directors</b>	1	1	2	1*	0	4*	3
<b>Steering Committee</b>	—	1	1	3*	3	8*	2

*\* The status of one or more additional meetings is unknown as no minutes were published.*

### 3.2.2 Technical Advisory Committee: Ad Hoc or Not?

From its beginnings, the ESJGWA envisioned the need for one or more ad hoc committees to investigate, advise, and provide the Board with recommendations on various technical, policy, and other matters that the Board would then act on. Being ad hoc, these committees met on an as-needed basis without an established schedule or published agenda, and their meetings were not noticed in advance. The Technical Advisory Committee (TAC) has operated as an ad hoc committee.

Based on an examination of Board and Steering Committee meeting minutes, a compiled listing of TAC meeting dates and assignments from February 2020 to March 2023, and witness testimony, the Grand Jury concluded that the TAC has existed in some form nearly continuously since 2017. One witness commented: “The TAC has been around a long time.” In the Board meeting minutes of June 9, 2021, a member of the public questioned why “TAC meetings are open to the Public, but no notice is provided on the ESJ Groundwater website.” The minutes also note, “In response to TAC notices, it was confirmed that the meeting section will be updated on the ESJ Groundwater website appropriately to follow Brown Act.” The Grand Jury found no listing of TAC meeting notices on esjgroundwater.org. At the Board meeting held February 8, 2023, in response to past public

comments, Board members and staff discussed whether the TAC was a standing committee, demonstrating ambivalence about the TAC's ad hoc status.

### 3.2.3 Identifying Members of the Board: Who Are They?

During its investigation, the Grand Jury attempted to find the names of individuals representing member GSAs on the ESJGWA Board of Directors by examining its website, meeting agendas, and meeting minutes, and by querying witnesses. One witness, when asked if they could identify Board members, said they could not because "There are a bunch." Unlike its member GSAs, the ESJGWA does not identify who serves on the Board of Directors, either on its website or on its printed meeting agendas. Currently, the only way for the public to find who sits on the Board is by searching the minutes of Board meetings, where attending members are named in the roll call section. If a Board member was absent, or if their alternate attended, the Board member's identity would remain unknown. All the member GSAs provide the names and contact information for their Board members on their websites, and more than half list them on meeting agendas. Some provide photos of Board members on their websites as well.

## Findings

**F3.2.1** The Eastern San Joaquin Groundwater Authority Board routinely holds its meetings at times that differ from those stated in its Bylaws and on its website. Together with cancellations and a reduction in the number of Board meetings, this creates confusion and reduces opportunities for public engagement.

**F3.2.2** The Eastern San Joaquin Groundwater Authority Technical Advisory Committee is a de facto standing committee but does not follow noticing and transparency requirements for its meetings, violating the Brown Act and giving the public no insight or input into its activities.

**F3.2.3** The Eastern San Joaquin Groundwater Authority does not identify the individuals who serve on the Board of Directors on either its website or its agendas, making it difficult for the public to ascertain who governs the Eastern San Joaquin Groundwater Authority and who from each Groundwater Sustainability Agency sits on their Board.

## Recommendations

**R3.2.1** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors amend its Bylaws and update its website to reflect the actual meeting time of the Board.

**R3.2.2** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors, during a public meeting, discuss and implement options that would enable increased public attendance at its meetings.

**R3.2.3** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors acknowledge at one of its meetings that the Technical Advisory Committee (TAC) is a standing committee and direct that the TAC begin holding its meetings in compliance with the Brown Act.

**R3.2.4** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors ensure that its website has been updated to include the name, position, and contact information for each person serving on the Board and that this information be kept current.

**R3.2.5** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors ensure the name and position of each current Board member be included in the agenda of each Board meeting.

### **3.3 Meeting Minutes**

Minutes for a particular ESJGWA Board or Advisory/Steering Committee meeting are included in the agenda packet for the next meeting of that body. Agendas and agenda packets are posted on [esjgroundwater.org/Agendas](http://esjgroundwater.org/Agendas). There is no indication on the Agendas web page that minutes of the previous meeting are included in agenda packets. Member GSAs and other local government agency websites viewed by the Grand Jury frequently provide separate links to their meetings' minutes. The Grand Jury sometimes found it difficult to locate the minutes for a Board or Advisory/Steering Committee meeting held on a particular date, especially when the following meeting (and sometimes several meetings) had been cancelled. In a few instances, minutes are missing from the website, making it impossible for the Grand Jury to verify whether the previously scheduled meeting had occurred. Several stakeholder witnesses also expressed frustration with meeting minutes that are difficult to locate or missing.

## **Finding**

**F3.3.1** The minutes of Board and Steering Committee meetings are difficult to locate on the Eastern San Joaquin Groundwater Authority website and sometimes are not posted for months or at all, resulting in frustration for interested parties and a lack of transparency.

## **Recommendation**

**R3.3.1** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board of Directors make changes to the website to ensure all meeting minutes (including drafts) are posted within 10 business days of the meeting adjournment and made easily available to the public.

## **4.0 Administrative Issues**

### **4.1 Lapse in the County's MOA with Cal Water**

Cal Water has participated as part of the Eastern San Joaquin Groundwater Authority (ESJGWA) by means of a Memorandum of Agreement (MOA) between Cal Water and San Joaquin County. The original MOA was approved in May 2017 and stipulated it would terminate in three years or once the County adopted a Groundwater Sustainability Plan (GSP) but could be extended for up to two years. In December 2019, after the member Groundwater Sustainability Agencies (GSAs) and County all adopted the initial GSP, the term of the original MOA was extended for another two years. That renewed agreement lapsed in December 2021; however, the County Board of Supervisors did not approve another MOA with Cal Water until November 29, 2022. Witnesses

confirmed during Grand Jury questioning that the MOA had lapsed because of administrative oversight.

#### **4.2 Inadequate Staff Support**

Article 3.10 of the Joint Exercise of Powers Agreement (JPA) states the ESJGWA does not anticipate having any employees, but that employees of member GSAs may, with the GSA's consent, serve as ex officio employees. Certain County staff also fulfill ESJGWA staff roles. The Grand Jury heard testimony from several witnesses indicating staff support for the ESJGWA is insufficient. It was mentioned that certain staff members must fulfill multiple roles and shoulder many critical responsibilities and that doing so had resulted in overwork and stress. Other testimony related that some desired efforts in support of the ESJGWA's work were delayed or went unfulfilled and that a primary reason was a lack of resources and staffing. The high cost involved for staffing was mentioned several times. In addition, as noted in Section 3.1, other witness testimony and some documents supplied to the Grand Jury indicated updates to the ESJGWA's website have been delayed because of a shortage of staff support.

### **Findings**

**F4.1** San Joaquin County and Cal Water allowed their Memorandum of Agreement to automatically terminate in December 2021 and failed to renew it until November 2022, which undermines public confidence in the County's governance and due diligence in tracking all legal agreements.

**F4.2** The Eastern San Joaquin Groundwater Authority has insufficient staff support, which negatively impacts its ability to operate efficiently and can result in staff burnout and possible administrative delays and errors.

### **Recommendations**

**R4.1** By November 1, 2023, the San Joaquin Board of Supervisors develop, adopt, and implement a methodology for reviewing Eastern San Joaquin Groundwater Authority governance and contractual documents regularly to ensure that any that are approaching expiration can be acted upon promptly.

**R4.2** By November 1, 2023, the Eastern San Joaquin Groundwater Authority Board develop a recommendation and proposal for additional staffing necessary to adequately support its activities and present this proposal to the member Groundwater Sustainability Agencies' Boards and the County Board of Supervisors for approval.

### **Conclusion**

On March 2, 2023, the State Department of Water Resources (DWR) recommended approval of the GSPs for six critical subbasins, including the Eastern San Joaquin Subbasin. In its announcement, DWR noted: "While additional analytical work is needed during implementation, DWR deemed the framework for management sufficient under the law." The Grand Jury commends the ESJGWA and its member GSAs for their years of hard work to achieve this milestone accomplishment.

Going forward, the Grand Jury believes the ESJGWA has much to do to improve the public's knowledge, understanding, and confidence in its operations. Needed improvements include increasing transparency of its operations and financial workings; revamping the presentation of information at public meetings and on the website to make it more complete and more accessible; improving and expanding communication efforts to identify, reach out, educate, and engage with the Subbasin's diverse stakeholder communities; and allocating more resources for administrative support to ensure efficient and timely operations. While the ESJGWA has begun to address some of these concerns, by incorporating the Grand Jury recommendations the ESJGWA will raise awareness of their efforts and better serve the interests of San Joaquin County's groundwater users.

### **Disclaimers**

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911, 924.1(a), and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

### **Response Requirements**

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report for the Eastern San Joaquin Groundwater Authority Board of Directors and San Joaquin County Board of Supervisors, and within 60 days of receipt of the report for the San Joaquin County Auditor-Controller.

- The Eastern San Joaquin Groundwater Authority Board of Directors shall respond to:  
Findings F1.2.1, F1.2.2, F1.3.1, F1.3.2, F2.2.1, F3.1.1, F3.1.2, F3.1.3, F3.1.4, F3.1.5, F3.2.1, F3.2.2, F3.2.3, F3.3.1, and F4.2;  
Recommendations R1.2.1, R1.2.2, R1.3.1, R1.3.2, R2.2.1, R3.1.1, R3.1.2, R3.1.3, R3.1.4, R3.1.5, R3.2.1, R3.2.2, R3.2.3, R3.2.4, R3.2.5, R3.3.1, and R4.2.
- The San Joaquin County Board of Supervisors shall respond to:  
Findings F2.2.2 and F4.1;  
Recommendations R2.2.2 and R4.1.
- The San Joaquin County Auditor-Controller shall respond to:  
Findings F2.2.3 and F2.2.4;  
Recommendations R2.2.3 and R2.2.4.

Mail or hand deliver a hard copy of the response to:

Honorable Michael D. Coughlan, Presiding Judge  
San Joaquin County Superior Court  
180 E Weber Ave, Suite 1306J  
Stockton, California 95202

Also, please email a copy of the response to Mr. Irving Jimenez, Staff Secretary to the Grand Jury, at [grandjury@sjcourts.org](mailto:grandjury@sjcourts.org)

## Appendix A: Stakeholder Engagement Chart for GSP Development

To assist GSAs with identifying individuals and groups they expected to engage with or inform while developing their GSP, the DWR provided the following chart to “stimulate brainstorming.” DWR noted that the list is not exclusive.

Category of Interest	Examples of Stakeholder Groups
General Public	<ul style="list-style-type: none"> <li>• Citizens groups</li> <li>• Community leader</li> </ul>
Land Use	<ul style="list-style-type: none"> <li>• Municipalities (City leaders, County planning departments)</li> <li>• Regional land use agencies</li> </ul>
Private users	<ul style="list-style-type: none"> <li>• Private pumpers</li> <li>• Domestic users</li> <li>• Schools and colleges</li> <li>• Hospitals</li> </ul>
Urban/ Agriculture users	<ul style="list-style-type: none"> <li>• Water agencies</li> <li>• Irrigation districts</li> <li>• Municipal water companies</li> <li>• Resource conservation districts</li> <li>• Farmers/Farm Bureaus</li> </ul>
Industrial users	<ul style="list-style-type: none"> <li>• Commercial and industrial self-suppliers; groups</li> <li>• Local trade association or group</li> </ul>
Environmental and Ecosystem	<ul style="list-style-type: none"> <li>• Federal and State agencies (Fish and Wildlife)</li> <li>• Wetland managers</li> <li>• Environmental groups</li> </ul>
Economic Development	<ul style="list-style-type: none"> <li>• Chambers of commerce</li> <li>• Business groups/associations</li> <li>• Elected officials (Board of Supervisors, City Council members)</li> <li>• State Assembly members</li> <li>• State Senators</li> </ul>
Human right to water	<ul style="list-style-type: none"> <li>• Disadvantaged Communities</li> <li>• Small community systems</li> <li>• Environmental Justice Groups</li> </ul>
Tribes	<ul style="list-style-type: none"> <li>• Tribal Government</li> </ul>
Federal and State lands	<ul style="list-style-type: none"> <li>• Military bases/Department of Defense</li> <li>• Forest Service</li> <li>• National Park Services</li> <li>• Bureau of Land Management</li> <li>• California Department of Fish and Wildlife</li> </ul>
Integrated Water Management	<ul style="list-style-type: none"> <li>• Regional water management groups (IRWM regions)</li> <li>• Flood agencies</li> <li>• Recycled water coalition</li> </ul>

*(Source: Guidance Document for Groundwater Sustainability Plan Stakeholder Communication and Engagement. California Department of Water Resources. January 2018.)*

## Appendix B: ESJGWA and GSA Website Compliance

REQUIRED	Eastern San Joaquin Groundwater Authority	Calaveras County Water District/ Stanislaus County	California Water Services Co. (Cal Water)	Central Delta Water Agency	Central San Joaquin Water Conservation District	City of Lodi
Has website?	Yes	Yes	Yes	Yes	Yes	Yes
ESJGWA site links to...	—	Yes	Yes	No	Yes	Yes
Link to most recent agenda on home page?	Yes	Yes	†	Yes	No	Yes
Contact info?	Yes	Yes	†	Yes	Yes	Yes
Agendas as searchable, indexable PDFs?	Yes	Yes	†	Yes	No	Yes
Enterprise System Catalog?	No	Yes	†	No	No	No
Financial Transaction Report (or link)?	No	No (but have budgets, independent audits)	†	No (link in a PDF)	No	No‡
Board Compensation Report (or link)?	No	No	†	No (link in a PDF)	No	No‡
ADA compliant?*	No	No		No	No	
<b>BEST PRACTICE</b>						
Board roster?	No	Yes	†	Yes, but old	Yes	Yes
Public can attend meetings via phone/online?	No	Yes	†	Yes	Yes (listen only)	Yes
Video/audio recording of board meetings?	No	Yes	†	No	No	Yes
Board meets after 5 pm?	No	No	†	No	No	Yes
BoD named on communications?	No	Yes	†	Yes	Yes	No
* Checked using accessibility.org compliance checker			† Not applicable because it is a private company			‡ But, Gov Code Sec. 53893 allows providing print copy when requested

	City of Manteca	City of Stockton	Linden County Water District	Lockford Community Services District	North San Joaquin Water Conservation District	Oakdale Irrigation District
<b>REQUIRED</b>						
Has website?	Yes	Yes	Yes	Yes	Yes	Yes
ESJGWA site links to...	Yes	Yes	Yes	No	Yes	Yes
Link to most recent agenda on home page?	Yes	Yes	Yes (but no agenda archive)	Yes	No	Yes
Contact info?	Yes	Yes	Yes	Yes	Yes	Yes
Agendas as searchable, indexable PDFs?	Yes	Yes	No	No	Yes	Yes
Enterprise System Catalog?	Yes	Yes (for 2016)	Yes	Yes	No	Yes (outdated; 2016)
Financial Transaction Report (or link)?	No‡	No‡	Yes (for 2019)	Yes	No	Yes
Board Compensation Report (or link)?	No‡	No‡	Yes (for 2020)	Yes	No	No
ADA compliant?*			No	Yes	No	No
<b>BEST PRACTICE</b>						
Board roster?	Yes	Yes	Yes	Yes	Yes	Yes
Public can attend meetings via phone/online?	Yes	Yes	No	No	Yes	Yes
Video/audio recording of board meetings?	Yes	Yes	No	No	No	No
Board meets after 5 pm?	Yes	Yes	Yes	No	No	No
BoD named on communications?	Yes	Yes	Yes	No	Yes	No
* Checked using accessibility.org compliance checker						

	San Joaquin County	South Delta Water Agency	South San Joaquin Groundwater Sustainability Agency	Stockton East Water District	Woodbridge Irrigation District
<b>REQUIRED</b>					
Has website?	Yes	Yes	Yes	Yes	Yes
ESJGWA site links to...	Yes	No	Yes	Yes	No
Link to most recent agenda on home page?	Yes	No	Yes	Yes	Yes
Contact info?		Yes	Yes	Yes	Yes
Agendas as searchable, indexable PDFs?	Yes	Yes	Yes	No	Yes
Enterprise System Catalog?	Yes	No	Yes	Yes	Yes
Financial Transaction Report (or link)?	No‡	Yes	Yes	No	Yes
Board Compensation Report (or link)?	No‡	Yes	Yes	No	Yes
ADA compliant?*		Yes	Yes	No	Yes (12/15/22)
<b>BEST PRACTICE</b>					
Board roster?	Yes	Yes	Yes	Yes	Yes
Public can attend meetings via phone/online?	Yes	No	No	Yes	No
Video/audio recording of board meetings?	Yes	No	No	No	No
Board meets after 5 pm?	No	No	No	No	No
BoD named on communications?	Yes	No	No	Yes	No
* Checked using accessibility.org compliance checker					