



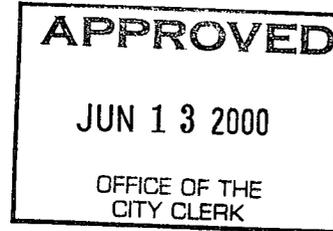
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Department of Utilities  
Engineering Services Division

CITY OF SACRAMENTO  
CALIFORNIA

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May 31, 2000



City Council  
Sacramento, California

Honorable Members in Session:

**SUBJECT: APPROVAL OF CHANGES TO JOINT POWERS AGREEMENT (JPA) FOR THE SACRAMENTO NORTH AREA GROUNDWATER MANAGEMENT AUTHORITY (SNAGMA)**

**RECOMMENDATION:**

Staff recommends that the City Council approve revisions to the JPA for SNAGMA.

**CONTACT PERSON:** Gary A. Reents, Engineering Services Manager, 264-1433

**FOR COUNCIL MEETING OF:** June 13, 2000

**SUMMARY**

City Council approved the original JPA forming SNAGMA in August 1998. Modifications to the JPA are proposed to clarify the weighted voting procedures and the terms for board officers.

**COMMITTEE/COMMISSION ACTION**

None.

**BACKGROUND INFORMATION**

- On August 11, 1998, the City Council approved a Joint Powers Agreement (JPA) which created the Sacramento North Area Groundwater Management Authority (Authority).



CITY OF SACRAMENTO  
DEPARTMENT  
OF UTILITIES

*Making a Difference in Your Neighborhood*

City Council  
May 31, 2000  
SNAGMA - Joint Powers Agreement

- Signatories to the JPA are the City, the County of Sacramento, and the Cities of Citrus Heights and Folsom.
- The JPA delegates to the Authority the powers to manage the groundwater basin consistent with the Water Forum Agreement and establishes the membership of the Authority to include:
  - An elected member of the governing body of each water purveyor, which includes the City of Sacramento
  - A member of the Board or designee for each private purveyor
  - One representative of agricultural interests in the North Area
  - One member of self-supplied groundwater users in the North Area
- After one full year of existence and experience, it has become apparent that it would be advisable to modify slightly some of the provisions of the JPA. SNAGMA assembled a committee to review the JPA. Language was drafted to clarify SNAGMA's voting and double majority voting requirements and to correct several drafting errors in the JPA. A discussion of these issues and an explanation of the recommended language changes is included as Attachments A and B.
- The primary issues of concern regarding the JPA center around the double majority voting requirement for administrative costs. Questions have been raised regarding (1) what constitutes an "administrative" cost, as opposed to a "water" cost, (2) when a double majority vote is required, (3) how the votes are to be weighted, (4) when approval of an action has been obtained for purposes of weighted votes, and (5) how "abstention" votes are to be counted. Questions have also been raised about the terms of office for board officers. Finally, a few "editorial" corrections have been identified. A modified JPA showing deletions and additions is included as Attachment C.
- The City Attorney's office has reviewed and approved the proposed changes. A final executable copy of the revised JPA is included as Attachment D.

## **FINANCIAL CONSIDERATIONS**

The proposed action will have no financial impact to the City.

## **ENVIRONMENTAL CONSIDERATIONS**

In compliance with the California Environmental Quality Act (CEQA), the City certified a negative declaration regarding the JPA on August 11, 1998.

City Council  
May 30, 2000  
SNAGMA - Joint Powers Agreement

**POLICY CONSIDERATION**

The proposed action simply clarifies the original JPA language but does not change the original intent.

**ESBD CONSIDERATIONS**

None, since no goods or services are being purchased.

Respectfully submitted,



\_\_\_\_\_  
Gary A. Reents,  
Engineering Services Manager

RECOMMENDATION APPROVED:



\_\_\_\_\_  
Robert P. Thomas  
City Manager

APPROVED:



\_\_\_\_\_  
James G. Sequeira  
Director of Utilities

**RESOLUTION NO. 2000-324**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

**APPROVED**  
JUN 13 2000  
OFFICE OF THE  
CITY CLERK

**A RESOLUTION APPROVING CHANGES TO THE JOINT POWERS AGREEMENT (JPA)  
FOR THE SACRAMENTO NORTH AREA GROUNDWATER MANAGEMENT  
AUTHORITY (SNAGMA)**

**BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:**

The City Council hereby approves changes to the Joint Powers Agreement (JPA) for the Sacramento North Area Groundwater Management Authority (SNAGMA).

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
FOR CITY CLERK USE ONLY

RESOLUTION NO. \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_

**ATTACHMENT A**  
**PROPOSED REVISIONS TO RULES OF PROCEDURE AND**  
**JOINT POWER AGREEMENT**

**I.**

**INTRODUCTION**

You have asked us to review various provisions of the Sacramento North Area Groundwater Management Authority (“SNAGMA”) Rules of Procedure (“Rules”) and Joint Power Agreement (“JPA”) to determine whether changes or modifications to either or both documents should be proposed to ensure that the language of those documents is consistent the purposes and policies for which SNAGMA was created. After one full year of existence and experience, it has become apparent that it would be advisable to modify slightly some of the provisions of SNAGMA’s Rules and JPA. Chairman Alessandri has assembled a committee to review the JPA and the Rules. Accordingly, you have asked us to describe the provisions of the Rules and JPA that raise possible issues, and to draft language that might clarify and/or better advance SNAGMA’s purposes. In a nutshell, we have drafted language to clarify SNAGMA’s voting and double majority voting requirements and to correct several drafting errors in the JPA and Rules. (See Attachments A and B)

**II.**

**DISCUSSION**

The primary issues of concern regarding the Rules and JPA center around the double majority voting requirement for administrative costs. Questions have been raised regarding (1) what constitutes an “administrative” cost, as opposed to a “water” cost, (2) when a double majority vote is required, (3) how the votes are to be weighted, (4) when approval of an action has been obtained for purposes of weighted votes, and (5) how “abstention” votes are to be counted. Questions have also been raised about the terms of office for board officers. Finally, a few “editorial” corrections have been identified. Below is a brief discussion of the provisions of the Rules and JPA relevant to

these issues. Attachment A provides draft language for JPA modifications, and Attachment B provides draft language for Rules modifications.

#### **A. Voting and Weighted Voting Requirements**

Section 9 of the JPA specifies that “a majority of the members of the governing board shall constitute a quorum for purposes of transacting business, except that less than a quorum may vote to adjourn a meeting.” Section 8 of the JPA prescribes how the Board of Directors is to take action. Subsection 8(a) provides that each member of the governing board shall have one vote and that, with the exception of fiscal items related to administrative and water costs of SNAGMA, a majority vote of all members of the governing board is required to approve any item.

Subsection 8(b) provides that:

Fiscal items related to the **administrative costs** of the Authority shall require approval by a double majority consisting of the following: a majority vote of all members of the governing board and a majority vote weighted on the basis of total water production within the boundaries of the Authority, as defined in Section 2(d)(i) hereof, during the previous fiscal year.

(Joint Powers Agreement § 8(b), bold in original). Section 2(d)(i) provides that:

For the purposes of determining assessments, fees or charges to support the **administrative costs** of the Authority, total water production means the combined surface water and groundwater delivered by retail providers, together with that water produced by agricultural and self-supplied users, for use within the boundaries of the Authority.

(Joint Powers Agreement § 2(d)(i)). Section 3.13 of SNAGMA’s Rules of Procedure implement Sections 8(b), 9 and 2(d)(i) of the JPA.

1. *“Administrative” Costs*

The JPA does not define or distinguish the type of SNAGMA costs that are deemed “administrative”, as opposed to “water” costs. SNAGMA’s Rules, however, define “Administrative Costs” as “all costs and expenses of the Authority related to the administration and management of the Authority, excluding ‘water costs’....” (Rules, § 1.23(a)). “Water Costs” are defined as “the costs or expenses incurred by the Authority for the purpose of carrying out: (1) purchasing or otherwise acquiring water; (2) pumping and treatment costs; and (3) other costs related to a conjunctive use program.” (Rules, § 1.23(m)). “Conjunctive use” is defined in Section 2(a) of the JPA (and Section 1.23(e) of the Rules) as “the planned management and use of both groundwater and surface water in order to maintain the sustainable yield of the North Area Basin.” Since the existing definitions in the JPA and the Rules probably describe “administrative” and “water” costs with sufficient clarity, more detailed definitions are probably unnecessary. We would suggest, however, an editorial modification to the definition of “water costs.”

As defined in Section 1.23(a) of the Rules, “administrative costs” include all of SNAGMA’s costs related to “administration and management,” excluding “water costs”. This definition adequately describes the types of day-to-day expenses that should be deemed “administrative,” and clearly excludes the types of “program” or “project” costs that are covered by Section 1.23(m)’s definition of “water costs.” The proposed editorial modification to the definition of “Water Costs” in Section 1.23(m) is a non-substantive, grammatical edit that would strike what appears to be superfluous language.

2. *When a weighted vote is required*

Section 2(d)(i) limits the range of “fiscal items related to the administrative costs of the Authority,” as set forth in Section 8(b), to matters involving “assessments, fees or charges.” As presently drafted, the JPA requires a weighted vote only in those instances where the Board is determining an “assessment, fee or charge” to support the administrative costs of the Authority.<sup>1</sup>

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<sup>1</sup>With respect to public agencies established for special purposes, such as SNAGMA, the  
(continued...)

Several members of the SNAGMA Board and other interested parties have expressed an interest in broadening the types of Board actions that require a weighted vote. The draft language attached as new Section 3.13(c)(2) of the Rules addresses these concerns. (See Attachment B).

The addition of new Section 3.13(c)(2) is intended to expand the range of “fiscal items related to the administrative costs of the Authority” to every action by the Board that adopts or modifies SNAGMA’s administrative budget, or that generates revenue to fund SNAGMA’s administrative budget (other than funding from outside sources). Under this expanded definition, approval of the “cost allocation” levy utilized by SNAGMA during the past two fiscal years would require a double majority vote, as would each of the budgets that SNAGMA has adopted. Additionally, a double majority approval would be required for actions to move funds from the administrative budget to other budgets.

3. *How votes are weighted*

Section 2(d)(i) of the JPA specifies that, for purposes of the weighted voting requirement for SNAGMA’s administrative costs, the vote of each member of SNAGMA’s Board will be weighted in proportion to the amount of water delivered or used by the purveyor or self-supplied interest that the Board member represents, in relation to the total amount of water delivered or used within SNAGMA’s boundaries. This formula includes delivery or use of both surface water and groundwater.

SNAGMA currently collects a flat rate of \$5,000 from surface water purveyors delivering 1,000 acre-feet or more, and collects payment from groundwater purveyors at a scheduled rate based

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<sup>1</sup>(...continued)

authority to make such levies typically comes from the legislature, the Constitution, and/or through such devices as a joint powers agreement. When properly levied pursuant to these authorities, the assessment, fee or charge, as those terms are commonly understood, typically becomes a legally enforceable debt obligation, and may be collected by legal action, such as a lien or foreclosure. Because SNAGMA has not yet developed a groundwater management program or data collection and management system, which would be necessary to establish the “nexus” required to levy a legally enforceable debt obligation, SNAGMA has not levied any assessments, charges or fees to finance its costs.

on the amount of water which they produce. For SNAGMA's FY 1999-2000 budget, the rate schedule adopted by the SNAGMA Board was \$2.50 per acre-foot of groundwater delivered. To date, SNAGMA has not requested payment from non-purveyors (i.e., self-supplied industry or individual agricultural pumpers).

Under SNAGMA's current weighted voting formula, if a purveyor delivered 20,000 acre-feet of water, and a total of 200,000 acre-feet were delivered or used within SNAGMA's boundaries, the Board member representing that purveyor would hold 10% of the voting power for a weighted vote on SNAGMA's administrative costs. This would be the case regardless of whether that purveyor delivered surface water or groundwater. Under SNAGMA's cost allocation formula, however, if the purveyor were delivering only surface water, it would be only be asked to pay \$5,000 dollars. If the purveyor was delivering only groundwater, it would be asked to pay \$50,000 (i.e., \$2.50 x 20,000 acre-feet). Assuming SNAGMA's administrative budget were \$300,000, the surface water purveyor would have 10% of the weighted voting power, even though it was contributing less than 2% of SNAGMA's administrative budget (\$5,000/\$300,000). Conversely, the groundwater purveyor would have 10% of the weighted voting power, yet would be contributing almost 17% of SNAGMA's administrative budget (\$50,000/\$300,000).<sup>2</sup>

Several SNAGMA Board members have suggested that SNAGMA's weighted voting formula should distribute weighted votes in a manner that more equitably reflects the contribution of each purveyor to SNAGMA's total administrative budget.

The draft modifications to Section 8(b) of the JPA are intended to ensure that weighted votes on "fiscal items related to the administrative costs of the Authority" are distributed in a manner consistent with the relative contributions of the entities represented on the SNAGMA Board. (See Attachment A). You will note that Section 2(d)(i), which defines "total water production" for purposes of determining how votes are to be weighted, has been deleted, and Section 2 has been reorganized accordingly. (See Attachment A).

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<sup>2</sup>Moreover, the current weighted voting formula provides weighted votes to the Board members representing non-purveyor interests (i.e., self-supplied industry and individual agricultural pumpers), even though those interests have not been asked to contribute to SNAGMA's administrative budget.

This modification significantly departs from the existing weighted voting formula set forth in Sections 8(b) and 2(d)(i) of the JPA, in that it abandons the “total water production” formula and substitutes a voting allocation formula that is based solely on the financial contribution of the interest represented by the Board member. Under this proposed formula, Section 2(d)(i) becomes unnecessary, since the existing definition of “total water production” in Section 2(d)(i) is used only for the purpose of determining the weighted voting formula for administrative costs.

The second to last sentence of new Section 8(b) would establish that the weighting formula for the succeeding year is to be fixed at the time the “financing plan for the administrative budget is adopted,” and would be applied prospectively to the weighted vote to approve the financing plan for the coming year. (See Attachment A). New Section 1.23(g) of the Rules would define the term “financing plan for the administrative budget,” to ensure that the weighted voting requirement includes all types of revenue-raising devices, such as the levy of assessments, fees or charges, as well as financing plans such as the “cost allocation” plan employed by SNAGMA during the past two years. (See Attachment B). The exact percentage of the weighted vote would be fixed at the time the plan is adopted, but would be applied prospectively to the vote to approve the plan. In other words, the weighted voting percentage in the proposed financing plan that was being voted on would be applied to the weighted vote itself. The last sentence provides that the weighted voting percentage of each Board member would remain in effect throughout the fiscal year, until a new weighted voting formula is adopted the following year. (See Attachment A).

If the proposed changes are adopted by SNAGMA, Section 8(e) would need to be modified to strike references to Section 8(b). (See Attachment A). The language of new Section 8(b) would be incorporated into Section 3.13(c)(1) of the Rules. (See Attachment B). As discussed above, new Section 3.13(c)(2) would define the term “fiscal items related to the administrative costs of the Authority.” Section 3.13(e) would be modified to strike references to Section 3.13(c), since the definition of “total water production” would no longer be used to determine the weighted voting percentage for votes on administrative costs. Section 1.23 of the Rules would be renumbered to reflect the insertion of the definition of “financing plan for the administrative budget.”

#### 4. *Approval requirements for weighted votes*

Additionally, there has been some confusion as to the approval requirements for taking action when a double majority vote is required. Section 9 of the JPA specifies that “a majority of the members of the governing board shall constitute a quorum for the purposes of transacting business.” (Joint Powers Agreement § 9). Assuming a quorum has been assembled, Section 8(b) of the JPA currently requires “approval by a double majority consisting of the following: a majority vote of all members of the governing board and a majority voted weighted on the basis of total water production ...” (Joint Powers Agreement § 8(b), emphasis added). Thus, “approval” of an action subject to a double majority vote requires (1) a majority vote of the entire board, including those members not present, and (2) a majority of all of the weighted votes (based on the weighted voting formula), including the weighted votes of Board members not present.

The double majority voting requirement could create a situation where a majority of the Board votes to approve the action (i.e., nine or more Board members vote to approve an action), but a majority of the weighted voting power does not (i.e., 50% or less of the weighted votes approve the action). In this situation, SNAGMA could not take action on the matter because less than a majority of the weighted votes “approved” the action, and thus a double majority approval was not obtained. Similarly, if less than a majority of the full Board voted to approve an action, even though a majority of the weighted votes approved the action, SNAGMA has not obtained a double majority vote and cannot approve the action. To clarify the approval requirements for weighted votes, additional language could be added to Section 3.13(b)(1) of the Rules. (See Attachment B). Aside from the change to the weighted voting formula, as discussed above, these proposed modifications appear to be mere clarifications of SNAGMA’s existing approval requirements.

#### 5. *Abstentions*

For purposes of SNAGMA’s voting requirements, a “majority” approval of a matter must include at least nine votes. SNAGMA’s JPA and Rules do not presently describe how “abstention” votes are to be counted. The general rule is that members who abstain are deemed to have acquiesced or concurred with the majority, regardless of whether the majority has voted in the affirmative (i.e., “aye”) or negative (i.e., “no”). (See *Dry Creek Valley Association, Inc. v. Board*

*of Supervisors* 67 Cal.App.3d 839 (1977)). However, when a Board member abstains from the vote because of a conflict of interest, that Board member's vote is not counted for any purpose, including for purposes of quorum assemblage. (See e.g., 4 FPPC Ops. 13 (1978); 61 Ops.Cal.Atty.Gen. 243 (1978)).

Thus, for example, if the SNAGMA Board were voting on a matter at a meeting in which ten of SNAGMA's 17 Board members were present, nine members present must vote to approve the matter. If one of the ten Board members present abstains from voting for reasons other than a conflict of interest, and one votes "no", and the other eight Board members vote to approve the action (i.e., "aye"), the abstaining Board member's vote will be counted with the majority, and the action could be approved. If, however, the abstaining member is abstaining because of a conflict, that Board member's vote will not be counted for any purpose. In this situation, a quorum would have been assembled for purpose of the vote taken (because nine voting members were present), but SNAGMA could not approve the action because a majority vote was not obtained (i.e., eight "ayes", one "no", and one uncounted abstention). The same general rules and analysis would apply to the counting of abstention votes for purposes of weighted votes. In the event that SNAGMA wishes to clarify these general abstention rules, draft language for a new subsection 3.13(b)(2) of the Rules has been provided. (See Attachment B).

## **B. Terms of Office for Board Officers**

Section 12 of the JPA requires the SNAGMA Board to "elect a chair, a vice chair and such other officers as the governing board shall find appropriate." (Joint Powers Agreement § 12). Section 12 further provides that such officers "shall serve for a term of one (1) year unless sooner terminated at the pleasure of the governing board." (Joint Powers Agreement § 12). Section 3.06(a) of the Rules implements Section 12 of the JPA, and provides, in part, that:

Board officers shall serve for a term of one (1) calendar year, unless sooner terminated at the pleasure of the Board, or unless the officer resigns. With respect to the initial term for Board officers, the term of office for each Board officer shall be for one (1) full calendar year following the date the initial appointments were made.

Elections for Chair and Vice Chair shall be conducted no later than the last regularly scheduled meeting that precedes the calendar year for which the appointments are made.

(Rules, § 3.06(a), emphasis added). The underlined text was included in the Rules for efficiency and clarity purposes, to conform the terms of Board officers to a “calendar” year (i.e., January to December). Since SNAGMA’s initial Board was convened very near the end of 1998, the Rules clarified that the initial term of Board officers would run for the full 1999 calendar year, in addition to the few months that remained in 1998. The term of office for all future Board officers will be one calendar year, beginning on January 1<sup>st</sup> and terminating on December 31<sup>st</sup>. Pursuant to the Rules, election of officers must take place no later than the last regularly scheduled meeting that precedes the calendar year for which the appointments are made.

### C. Editorial Corrections

Section 6 of the JPA (p. 6 of 19) provides that “[w]ith the exception of the City of Citrus Heights, the City of Folsom, the City of Sacramento and the County, membership in the governing board shall be limited to public and water purveyors, investor owned utilities and groundwater rights holders within the boundaries of the Authority.” (Joint Powers Agreement § 6, emphasis added). Section 5 of the JPA, which establishes the composition of the governing board, does not include a representative of the City of Citrus Heights. Since the JPA signatories intended that the members of the governing board be representatives of water purveyors and water users within SNAGMA’s boundaries, it appears that the reference to the City of Citrus Heights in Section 6 was a drafting error. (See Attachment A).

Additionally, Section 8(e) of the JPA (p. 9 of 19) currently provides, in part, that:

Total water production within the boundaries of the Authority during the previous calendar year for purposes of subsections (b) and (c) above shall be based on an annual determination by the governing body of the Authority of the total water

production during the previous fiscal year of each entity represented on the governing body.

(Emphasis added). Several Board members have suggested that the reference to “fiscal year” be changed to “calendar year,” to be consistent with the earlier reference to “calendar year.” (See Attachment A).

Finally, several Board members have requested that the title of the administrative officer of SNAGMA be changed from “Chief Executive Officer” to “General Manager”. (See Attachments A & B).

### III.

#### CONCLUSION

The committee reviewing these matters should evaluate the draft modifications attached hereto, to determine whether they are consistent with the purposes and policies for which SNAGMA was created. Legal counsel is available to work with the committee and the Board to review any such modifications. If SNAGMA proposes to make any changes or modifications to the JPA, approval by the JPA signatories will be required. Legal counsel will work with the County Counsel’s office and the City Attorney’s offices to seek the requested changes.

## ATTACHMENT B

### VOTER APPROVAL REQUIREMENTS FOR WATER COSTS

#### I. INTRODUCTION

At the monthly Board meeting of the Sacramento North Area Groundwater Management Authority (SNAGMA) on February 24, 2000, there was considerable discussion regarding the proposed amendments to Section 2(d) of the Joint Powers Agreement (JPA) and Section 3.13(d) of the Rules of Procedure (Rules), concerning the weighted voting requirement for "water costs." The Board directed counsel to further analyze the JPA and Rules and to propose additional language for consideration by the Ad-hoc JPA Revision Committee. This memorandum attempts to distill the issues raised by Section 2(d) of the JPA and Section 3.13(d) of the Rules, and provides additional proposals for possible amendments to those provisions.

#### II. DISCUSSION

With respect to the weighted voting requirements "for fiscal items related to water costs," the JPA presently provides that approval of such items requires approval by a majority of all members of the governing Board and "a majority voted weighted on the basis of total water production as defined in Section 2(d)(ii)" of the JPA. (JPA, § 8(c)). Section 2(d)(ii) presently provides that "total water production," for the purposes of determining assessments, fees or charges to support SNAGMA's water costs, means:

the groundwater portion of the total amount of water delivered by retail providers, together with that water produced by agricultural and self-supplied users, for use within the boundaries of the Authority.

(JPA, § 2(d)(ii), emphasis added).

As we interpret these provisions, a double majority vote is required for Board approval of assessments, fees and charges to support SNAGMA's water costs. With respect to the weighted vote, Section 2(d)(ii) distributes voting power to the representative of each retail provider, as well as the agricultural and self-supplied representatives, based on the amount of groundwater delivered by each of those interests for use within SNAGMA's boundaries, in relation to the total amount of groundwater delivered for use within SNAGMA's boundaries. Under these provisions, the voting power of those representatives would not be increased to the extent that the entities that they represent pump groundwater from within SNAGMA's boundaries and deliver the water for use outside of the boundaries. Similarly, for purposes of quantifying the total amount of groundwater delivered for use within SNAGMA's boundaries (against which each representative's production would be measured), the voting formula would not include water produced within SNAGMA's boundaries that is delivered for use outside of the SNAGMA's boundaries.

For example, assuming that a total of 100,000 acre-feet (“AF”) of groundwater is delivered for use within SNAGMA’s boundaries, and that purveyor X delivers 20,000 AF of that total within SNAGMA’s boundaries, purveyor X would have 20% of the voting power for votes on water costs. Even if purveyor X’s cumulative groundwater production were 30,000 AF, with 20,000 AF delivered for use within SNAGMA’s boundaries and 10,000 AF pumped for use outside of SNAGMA’s boundaries, purveyor X still would have only 20% of the voting power. For purposes of a weighted vote for water costs, therefore, neither the “total groundwater production” quantity nor “purveyor X’s groundwater production” quantity would reflect the quantity of water that was used outside of SNAGMA’s boundaries. Purveyor X’s production of groundwater for use outside of SNAGMA’s boundaries would not enhance its voting power for water costs.

What this weighted voting formula does not address, however, is the groundwater production in the North Area Basin, regardless of the place of use. As presented to the SNAGMA Board on February 24, 2000, the proposed amendment to Section 2(d) of the JPA would provide that:

Water production, for purposes of determining assessments, fees or charges to support water costs of the Authority, means the amount of groundwater produced within the boundaries of the Authority by each retail provider, by agricultural interests, and by commercial/industrial self-supplied water users. (Emphasis added).

Under this formula, votes for water costs are weighted according to the quantity of water produced, or pumped, within SNAGMA’s boundaries, irrespective of whether the water is delivered for use within or outside of the boundaries. As such, using the same hypothetical example as above, if purveyor X pumps 20,000 AF for use within SNAGMA’s boundaries and 10,000 AF for use outside of SNAGMA’s boundaries, and the total water production within SNAGMA’s boundaries is 110,000 AF, purveyor X carries approximately 27% of the voting power. Under the proposed new formula, therefore, purveyor X’s voting power would be enhanced to the extent of its production for use outside of SNAGMA’s boundaries.

The difficulty in adequately defining the weighted voting formula in Section 2(d) underscore the fact that several distinct policy issues could be implicated by the voting formula provisions. Although Sections 2(d) and 8(c) of the JPA, and their counterpart provisions in the Rules, specifically involve only the weighted voting formula for water costs, there is a presumption that a groundwater producer’s voting power for water costs should be reflective of that producer’s financial obligation for SNAGMA’s water costs. This presumption could suggest that all groundwater production within SNAGMA’s boundaries should be included in the formula to ensure that all production is accounted for under SNAGMA’s “groundwater management program,” which likely will prescribe financial responsibility for water costs. Additionally, the formula arguably implicates other policy considerations, such as “export” of groundwater from the North Area Basin and the “safe yield” of the North Area Basin;<sup>1</sup> in other words, to the extent that all groundwater production may be “assessable” under SNAGMA’s groundwater management program, a logical inference is that

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<sup>1</sup>As used herein, the term “export” is simply shorthand for groundwater production within SNAGMA’s boundaries for use outside of SNAGMA’s boundaries. No other meaning should be construed from this term.

pumping patterns in the North Area Basin could be affected by the groundwater management program.

Consequently, the primary impediment to adequately developing a weighted voting formula is the fact that it is unclear at this time how such costs will ultimately be financed (and which pumpers will be responsible) under SNAGMA's groundwater management program. As you know, the JPA directs SNAGMA to implement its groundwater management program through a financial incentive/disincentive program in a manner that will (1) encourage conjunctive use of surface water and groundwater and (2) protect the long-term safe yield of the basin. (See, e.g., JPA, § 16(a)). Revenues generated through the financial incentive/disincentive program likely will be used to develop surface water supplies and to otherwise promote conjunctive management of the North Area Basin. At this time, however, it is unknown how the financial incentive/disincentive program will operate and, consequently, it is difficult to develop a weighted voting formula that would fairly and equitably distribute voting power in proportion to a producer's financial obligation. It is even more difficult to develop a formula to address other policy considerations, such as "export" and "safe yield" protection.

Given the difficulty with formulating an adequate weighted voting formula at this time, we have developed several alternatives for amendments to Section 8(c) of the JPA, and its counterpart provisions in the Rules. Alternatively, the Board could retain the existing language of Section 2(d), or propose the amendment offered by the Ad-Hoc JPA Revision Committee on February 24<sup>th</sup>. Keeping in mind that Section 2(d) involves only the weighted voting formula, the only difference between the existing and proposed language is the voting weight given to water "exported" from the North Area Basin. As discussed above, however, the "problem" with both of these formulas is that there is no assurance that the voting power will be reflective of the ultimate financial obligation of the groundwater producers. After SNAGMA's groundwater management program is adopted, the financial incentive/disincentive program will determine a groundwater producer's financial obligation, which could fluctuate from year to year. For example, purveyor X may be encouraged (through financial incentives) to pump groundwater in some years, and discouraged (through financial disincentives) from pumping groundwater in other years. Under the existing and proposed formulas, the vote of purveyor X would be weighted according to "water delivered for use" or "production", but would not be based on purveyor X's financial responsibility for water costs.

Alternatively, the Board might consider proposing amendments to the JPA that eliminate the weighted voting requirement for water costs entirely. For example, in place of the weighted vote, the Board might consider proposing an amendment that provides for a "super-majority" voter approval (i.e., two-thirds or four-fifths approval), applicable only to approval of the groundwater management program, including the financial incentive/disincentive program. The "super-majority" vote could be limited to groundwater producers only, or it could include all water users/purveyors in the North Area Basin. An example of such language might be:

The Board of the Authority shall adopt a super-majority formula applicable to votes on adoption of the Authority's groundwater management program.

With this type of amendment, Section 2(d) would be deleted from the JPA entirely.

Another alternative is to request an amendment that would delegate authority to SNAGMA to adopt its own "weighted" or "super-majority" voting requirement. If the Board were to adopt this approach, the proposed amendment should be specifically tailored to assure the JPA signatories that SNAGMA's voting protocol or formula will be fair and equitable to all interests represented on the Board. The amendment also should include some parameters for developing such protocols or formulas to provide assurances to the signatories that SNAGMA's voting procedures will not be unbounded. For example, the amendment could provide at Section 8(c):

The Board of the Authority shall adopt a [weighted voting/super-majority] formula applicable to votes on assessments, fees and charges related to water costs of the Authority.

With this type of amendment, Section 2(d) would be deleted from the JPA entirely.